TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 370

JUAN PEREZ CAMI, MUNICIPAL COMMISSIONER OF FINANCE, PETITIONER,

vs.

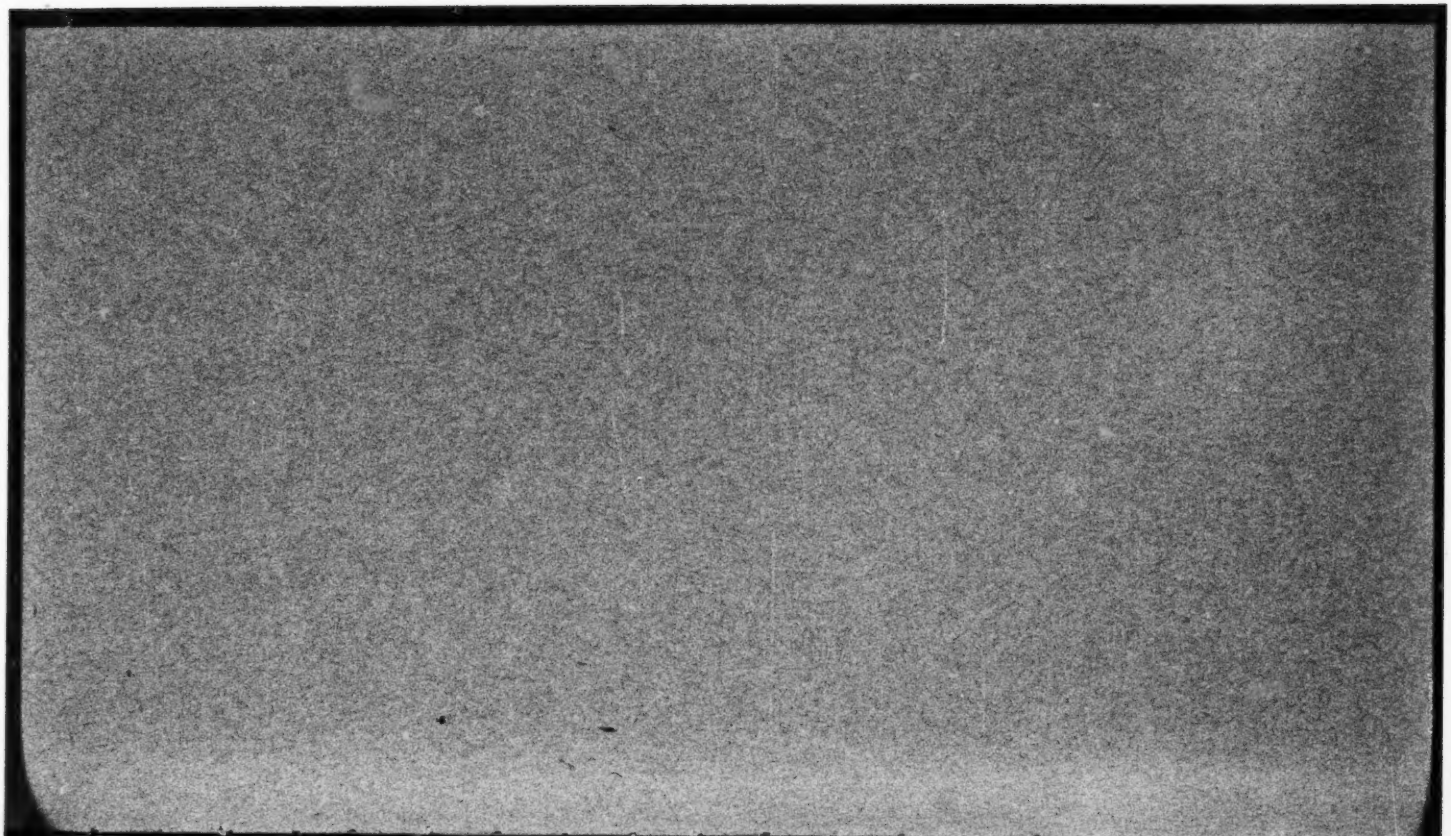
CENTRAL VICTORIA, LTD.

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 10, 1934

CERTIORARI GRANTED JUNE 1, 1934

(30,397)



(30,297)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 370

JUAN PEREZ CAMI, MUNICIPAL COMMISSIONER OF FINANCE, PETITIONER,

vs.

CENTRAL VICTORIA, LTD.

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

INDEX

	Original	Print
Proceedings in the United States circuit court of appeals for the first circuit	1	1
Caption (omitted in printing)	1	1
Record from the district court of San Juan, P. R.	1	1
Petition for an injunction	1	1
Petition for a preliminary injunction	5	3
Order for preliminary injunction	6	4
Writ of injunction and return	7	5
Answer	9	7
Pleading	13	9
Petition to set aside order for preliminary injunction	19	13
Stipulation to hear case on briefs already filed	23	15
Opinion, Sena, J.	23	16
Judgment	31	21
Notice of judgment	31	22
Notice of appeal	32	22
Stipulation re transcript of record	33	23

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 5, 1925

	Original	Print
Record from supreme court of Porto Rico	33	24
Opinion, Wolf, J	33	24
Judgment	36	26
Petition for appeal	36	26
Assignment of errors	37	26
Order allowing appeal	37	27
Order amending order for bonds	38	27
Bond on appeal (omitted in printing)	39	28
Writ of supersedeas	41	28
Citation and service (omitted in printing)	43	29
Orders extending time	44	29
Clerk's certificate	45	30
Proceedings in the United States circuit court of appeals	47	30
Opinion per curiam	47	30
Final decree	47	31
Clerk's certificate	47	31
Order granting petition for certiorari	48	31

[fol. 1] CAPTION—Omitted

IN DISTRICT COURT FOR THE JUDICIAL DISTRICT OF SAN JUAN, P. R., SECOND DIVISION

No. 2300

CENTRAL VICTORIA, LTD., Plaintiff,

v.

JUAN PEREZ CAMI, Municipal Commissioner of Finance of Carolina, Defendant

Action for an Injunction, etc.

PETITION FOR AN INJUNCTION—Filed March 17, 1921

Comes now the petitioner and by its undersigned attorney respectfully shows:

I. That on February 17, 1921, the Municipal Assembly of Carolina passed a municipal ordinance reading literally as follows:

"Municipal Government of Carolina.—Porto Rico.—Municipal Assembly.—Ordinance imposing a tax of ten cents on every hundredweight of Sugar manufactured in this municipality in order to meet the budgetary appropriations for the year 1921 to 1922. [fol. 2] * * * Whereas subdivision 4 of section 26 of the Municipal Law empowers the municipalities to levy taxes and excises of whatsoever nature. * * * Whereas this municipality is short of the necessary funds to meet its budgetary expenses for the fiscal year 1921-1922. * * * Now, therefore, be it resolved by the Municipal Assembly of Carolina, P. R. * * *

Sec. 1. That as and from July 1, 1921, and during the fiscal year 1921-1922, a tax of ten cents shall be imposed and collected by the Municipal Treasurer on every hundredweight of sugar manufactured in the Municipal District of Carolina, the collection of which shall conform to the memoranda furnished by the respective factories.

Sec. 2. The Municipal Commissioner of Finance is hereby authorized, either personally or by any of the employes of his department, to proceed at intervals to make investigations to ascertain whether the statements furnished by the manufacturers of sugar conform strictly to the number of hundredweights manufactured. * * *

Sec. 3. The collection of the aforesaid tax shall be made on any day of the months of February, April and June of the year 1922. The amounts so collected shall be used in the technical study of a scheme for the proposed establishment of communities by this munic-

ipality; for the erection of inexpensive school buildings and living quarters for teachers in the communities; for the acquisition of lands on which to form such communities, the organization thereof and of school farms.

"Sec. 4. Any person, association or corporation that by false or insidious propaganda or by any other unlawful or malicious means shall attempt to violate or should violate or be the cause of the violation, or shall attempt to delay or be the cause of any delay in the enforcement of any of the provisions of this ordinance, shall be liable to a minimum fine of from five to fifty dollars or imprisonment in jail for from five to fifteen days, or to both penalties at the [fol. 3] discretion of the court. * * *

Sec. 5. Any ordinance or resolution, or part thereof, in conflict herewith, is hereby repealed. * * *

Sec. 6. This ordinance, which is unanimously adopted by the members of the Municipal Assembly of this city in session assembled, shall begin to take effect twenty days after its publication in the ordinary way. * * * Approved this seventeenth day of February, 1921."

II. That by virtue of said ordinance the defendant, as and from July 1, 1921, intends to collect from the plaintiff the sum of ten cents on every hundredweight of sugar manufactured by the latter, and seeks to compel the complaining corporation to furnish a statement of its manufactured output showing the number of bags corresponding to the factory and the number corresponding to the cane growers (colonos); and, in general, to force the complaining corporation to comply with each and every provision of said municipal ordinance.

III. The complainant contends that the municipal ordinance referred to herein is null and void and without any legal force whatever, and that its enforcement against the complaining corporation constitutes an unlawful, oppressive and unjust act.

IV. That the ordinance to which this complaint refers is illegal and null for the following reasons:

1. Because the Municipal Assembly of Carolina has no power or authority to impose a special tax in cases other than those provided for by the Municipal Law.

2. Because the ordinance referred to herein is a surtax on the property assessable in the municipality, exceeding the one per cent allowed by law on the value of property.

3. Because the tax created by the ordinance herein referred to is tantamount to an export tax on sugar manufactured in the municipality of Carolina, and repugnant to the provisions of the Organic Act.

4. Because said ordinance is oppressive and unjust inasmuch as [fol. 4] it has been made with the intent and purpose of imposing a tax exclusively *an* the Central Victoria belonging to the complainant and situated in the municipal district of Carolina, without considering the cost of the production of sugar by said Central or the competitive conditions in the market, thereby placing the complaining association in a disadvantageous position in its relation to other sugar factories in Porto Rico.

5. Because said ordinance imposes a tax without establishing the basic value of the property on which it is levied.

6. Because this ordinance imposes a double tax on the property affected by the excise.

V. The said ordinance places the defendant in a position to cause irreparable injury to the plaintiff against which it has no speedy remedy in the ordinary process of law and would be unable to comply therewith.

Wherefore plaintiff prays the court to render judgment, after duly hearing the defendant, enjoining him personally, in his capacity of Municipal Commissioner of Finance of Carolina or through his agents or employes or any other person acting under him, from taking any steps having for their object the collection of said tax as imposed by the ordinance of February 17, 1921, subject-matter hereof, and muleting him with costs, disbursements and attorney fees in case of opposition.

Cay. Coll Cuchi, Attorney for the Complainant.

Jurat showing the foregoing was duly sworn to by Abelardo de la Haba omitted in printing.

[fol. 5] [File endorsement omitted.]

In District Court of San Juan

Petition for a Preliminary Injunction

Comes now the plaintiff in the above mentioned case and by its attorney respectfully shows:

I. That it has today filed in the office of the clerk of this court a petition for an injunction and other relief against the Municipal Commissioner of Finance of Carolina, to which it refers in support of this preliminary petition as though it formed a part hereof.

II. That pending a definite decision of the said petition by this court after due legal formalities, the defendant will proceed to carry out the provisions of the ordinance mentioned in the original application with serious impairment of the rights of the complainant

and that petitioner has no means of preventing the same other than by the issuance of a preliminary injunction by this court.

III. That inasmuch as the imposition of the tax by said ordinance constitutes an illegal act and causes serious and irreparable injury to the plaintiff, the plaintiff prays that, pending the decision of the original application for injunction filed herein, the court issue a preliminary order of injunction directed to Juan Perez Cami as Municipal Commissioner of Finance of Carolina enjoining him personally or through his agents or employees from carrying out the ordinance which constitutes the subject-matter of the original application, or any of the provisions thereof, and more particularly the provision relative to the collection of the tax of ten cents on each [fol. 6] hundredweight of sugar produced by the plaintiff corporation.

San Juan, P. R., March 17, 1921.

Cay. Coll Cuchi, Attorney for the Plaintiff.

IN DISTRICT COURT OF SAN JUAN

ORDER FOR PRELIMINARY INJUNCTION

Whereas, the Central Victoria, Ltd., an agricultural and industrial corporation organized under the laws of Porto Rico and doing business in this island, has appeared before this court by its attorney, Cayetano Coll Cuchi, and asked for an order commanding the defendant in this case, Juan Perez Cami, Municipal Commissioner of Finance of Carolina, to abstain from all attempts personally, or by his agents, to enforce the ordinance of the Municipal Assembly of Carolina creating a tax on sugar manufactured in the municipality of Carolina beginning with July 1, 1921, and during the fiscal year of 1921-1922, approved on February 17, 1921;

And whereas, in said verified petition it is duly averred that the said ordinance is null and void and without any legal force for the reasons set out in said petition;

And whereas, if such ordinance be really null or improper, the collection of said tax would undoubtedly be prejudicial to the complaining corporation and the ordinary proceeding at law insufficiently speedy to avoid the same;

Now, therefore, be it ordered and declared that you, Juan Perez Cami, Municipal Commissioner of Finance of Carolina, from and after the date of service of this order by the marshal of this court shall abstain from making any effort or attempt, whether personally or by your agents or employees, looking to any enforcement whatever of the provisions of said ordinance, and more particularly the clause referring to the collection of a tax of ten cents on every hundredweight of sugar produced by the complaining corporation; and this preliminary order shall become permanent and definite unless you appear before this court on March 30, 1921, at 9 a. m.,

to show cause why the same should be changed, modified or reversed; [fol. 7] matters to remain as herein decreed pending further order by this court.

Made in San Juan this sevente-nth day of March, 1921.

M. Rodriguez Serra, Judge of the District Court, Section 2.

Attest: Q. Negron Sanjurjo, Secretary.

In District Court of San Juan

Writ of Injunction and Return

To the Marshal of the District Court of San Juan, P. R., Second Section.

Sir: Whereas at an open session of the court held on March 17, 1921, and upon petition of the complainant herein, Judge Manuel Rodriguez made the following order, to wit:

"In the District Court for the Judicial District of San Juan, P. R., Second Section

Civil Case No. —

Central Victoria, Ltd., Complainant,

v.

Juan Perez Cami, Municipal Commissioner of Finance of Carolina, Defendant

Order

Whereas the Central Victoria, Ltd., an agricultural and industrial corporation organized under the laws of Porto Rico and doing business in this island, has appeared before this court by its attorney, Cayetano Coll Cuchi, and asked for an order commanding the defendant in this case, Juan Perez Cami, Municipal Commissioner of Finance of Carolina, to abstain from all attempts personally, or by his agents, to enforce the ordinance of the Municipal Assembly of Carolina creating a tax on sugar manufactured in the municipality of Carolina beginning with July 1, 1921, and during the fiscal year of 1921-1922, approved on February 17, 1921;

And whereas in said verified petition it is duly averred that the said ordinance is null and void and without any legal force for the reasons set out in said petition;

[fol. 8] And whereas, if such ordinance be really null or improper, the collection of said tax would undoubtedly be prejudicial to the complaining corporation and the ordinary proceeding at law insufficiently speedy to avoid the same;

Now, therefore, be it ordered and decreed that you, Juan Perez Cami, Municipal Commissioner of Finance of Carolina, from and after the date of service of this order by the marshal of this court shall abstain from making any effort or attempt, whether personally or by your agents or employees, looking to any enforcement whatever of the provisions of said ordinance, and more particularly the provision referring to the collection of a tax of ten cents on every hundredweight of sugar produced by the complaining corporation; and this preliminary order shall become permanent and definite unless you appear before this court on March 30, 1921, at 9 a. m., to show cause why the same should be changed, modified or reversed; matters to remain as herein decreed pending further order by this court.

Made in San Juan this seventeenth day of March, 1921.

M. Rodriguez Serra, Judge of the District Court, Section 2."

And whereas said order has been duly entered;

Now, therefore, you, the marshal of the District Court for the Judicial District of San Juan, P. R., Section 2, shall, without unwarrantable excuse or undue delay, proceed to make demand upon Juan Perez Cami, Municipal Commissioner of Finance of Carolina, to abstain, personally or by his employees, from any attempt to collect the tax to which the said ordinance refers; and to require him to comply with the said order of the court in all its parts, making due return of service of this writ to the office of the clerk in not less than forty-eight hours.

San Juan, P. R., March 17, 1921.

Q. Negron Sanjurjo, Clerk District Court, Section 2, by Domingo Rivera, Deputy Clerk. (Seal.)

[fol. 9] Certificate of Service

I certify that I received the attached writ on March 18, 1921, at 2 p. m. and that I served the same on that day by proceeding to the town of Carolina, P. R., and thereafter showing this original to Juan Perez Cami, Municipal Commissioner of Finance of Carolina, P. R., and informing him of its contents, I made demand upon him to refrain, in person or by its agents, from making any attempt to enforce the ordinance of the Municipal Assembly of Carolina levying a tax on sugar manufactured in Carolina as and from July 1, 1921, and during the fiscal year of 1921-22, approved February 17, 1921. I personally served true copies of said writ, as well as of the petition for a preliminary injunction and order of the court granting the same, on defendant Juan Perez Cami.

San Juan, P. R., March 18, 1921.

Manuel Nater Girona, Marshal District Court, San Juan, Section 2, by P. del Manzano, Chief Deputy Marshal, Section 1.

[There are seven cancelled Internal Revenue stamps of $1 each.]

IN DISTRICT COURT OF SAN JUAN

ANSWER—Filed March 28, 1921

Comes now the defendant by his undersigned attorney and after demurring to the complaint herein answers it as follows:

I. He admits the facts set out under counts I and II of the complaint save as to the allegation that it is sought to compel the complainant to insert in the statement of its manufactured products the number of bags corresponding to the sugar planters (colonos), which the defendant denies.

II. He denies that the municipal ordinance approved by the Municipal Assembly of Carolina on February 13, 1921, or any other ordinance approved by said assembly, is null and without force or effect, or that the enforcement of said ordinance constitutes an oppressive, unjust or in any way illegal act against the plaintiff or against any other person, natural or juridical.

III. As to paragraph IV of the complaint, the defendant denies: [fol. 10] 1. That the Municipal Assembly of Carolina is not empowered or authorized to impose special taxes not provided for in the Municipal Law as contended in subdivision 1 of count IV of the complaint.

And the defendant alleges, in contravention of the averments contained in said subdivision, that the Municipal Assemblies of Porto Rico, including the Municipal Assembly of Carolina, are tacitly empowered to impose any special tax that may be required for the enforcement of the powers expressly conferred upon them by the said Municipal Law now in force.

2. As to sub-division 2 of count IV of the complaint, defendant likewise denies that the said ordinance approved by the Municipal Assembly of California, referred to in the complaint, constitutes any surcharge whatsoever on the property tax assessable in the municipality of Carolina; and as matter of opposition to the allegations contained in said sub-division 2, the defendant contends that even if said ordinance should constitute a surcharge on the property tax assessable, such tax would not be in excess of one per cent.

3. As to sub-division 3 of said count IV of the complaint, the defendant denies that the tax levied by said ordinance of February 13, 1921, constitutes an export tax on sugar manufactured in the municipality of Carolina or on any other article manufactured in said municipality, or in any other municipality of Porto Rico.

4. As to sub-division 4 of count IV of the complaint, the defendant denies that the said ordinance was made for the purpose of levying a tax on the Central Victoria exclusively or on any other central belonging to the plaintiff or to any natural or juridical person situate in the municipality of Carolina or in any other municipality. The

defendant also denies that said ordinance was made without considering the cost of the sugar production or the conditions regulating competition in the market. And the defendant alleges that the said ordinance levies a tax of ten cents on every hundredweight of sugar manufactured in the municipal district of Carolina irrespectively of the Central Victoria or any other central in operation or [fol. 11] that may be operated in said municipal district. And the defendant further alleges that said tax has been imposed after considering the conditions and cost of the production of sugar as well as all the other conditions and circumstances looking to the levying of a just, fair and uniform tax, under the powers conferred on the Municipal Assembly of Carolina by the Municipal Law in force.

5. As to subdivision 5 of count IV of the complaint, the defendant denies that the said ordinance fails to impose as a basis for the tax assessed the value of the property upon which it is imposed. And the defendant alleges that, for the purpose of the levy of the said tax, it is not necessary to take into account the value of the property paying the same, said tax being an excise tax unanimously adopted by the Municipal Assembly of Carolina upon an article which was not at the time the tax was assessed, and is not now, the object of any federal or insular tax.

6. As to subdivision 6 of count IV of the said complaint the defendant denies that the ordinance referred to in paragraph IV of said ordinance (sic) constitutes a double tax on the property affected by the excise tax imposed or created by the said ordinance. And the defendant contends that even if it did said tax or excise would be lawful, since the power to levy the same is included among the powers conferred upon the Municipal Assembly of Carolina by the said Municipal Law in force.

IV. As to count V of the complaint, the defendant denies that the enforcement of the ordinance can or will cause the plaintiff irreparable or any other injury for the relief of which the plaintiff would not have an adequate and speedy remedy by means of ordinary proceedings. And the defendant contends, in opposition to the allegation in said count of the complaint, that if the effectiveness and enforcement of the ordinance should cause the plaintiff any injury, it has a speedy and adequate remedy by recourse to the ordinary judicial proceedings in force in Porto Rico for the recovery of the losses or damages that said ordinance might cause the plaintiff, in the event that such damages might be incurred.

[fol.12] Wherefore the defendant prays the court, after due proceedings at law have been had, to dismiss the complaint and mulct the plaintiff with the costs, attorney fees and other disbursements incurred herein.

*D*an Juan, Porto Rico, March , 1921.

Juan B. Soto, Attorney for the Defendant.

Jurat showing the foregoing was duly sworn to by Juan Perez Cami omitted in printing.

[fol. 13] IN DISTRICT COURT OF SAN JUAN

PLEADING—Filed April 4, 1921

Comes now the defendant, by his undersigned attorney, for the purpose of showing why the order for a preliminary injunction rendered herein on March 17, 1921, and directed to the defendant in his capacity of Municipal Commissioner of Finance of Carolina, should be annulled.

I. Defendant contends that said order should be set aside for the following reasons:

1. Because the ordinance is legal and valid, having been made under the powers conferred upon municipal assemblies by Act No. 85 of the Legislative Assembly of Porto Rico, approved on July 31, 1919.

(See sections 8 and 9, subdivision 4 of section 26 and subdivision "F" of section 49 of said Act.)

2. Because the ordinance to which said order refers does not constitute a surcharge on the property tax assessable in the municipality of Carolina, since the said ordinance imposes an excise on the manufacture of a commodity which has not been made the subject of any federal or insular tax.

(See subdivision 1 of section 49 of the said Act. Also the judgments of the Supreme Court of Washington, 46 Law Ed. 718, rendered in the case of Patton v. Brady, 46 Law Ed. 713, in which, so far as applicable to this case, it is held:)

"An excise (arbitrio) is: 'An inland duty or impost operating as an indirect tax on the consumer, levied upon certain specified articles as tobacco, ale, spirits, etc., grown or manufactured in the country."

3. Because the tax imposed by said ordinance is not an export tax but an excise levied upon sugar manufactured in the municipality of Carolina.

(See subdivision "F" of section 49.)

4. Because said ordinance is neither unjust nor oppressive but equitable and uniform.

It does not levy any tax that should be based on the value of the property required to carry the same since what it provides for is an [fol. 14] excise and not a direct tax, such excise being levied on the making or manufacture of sugar in the municipal district of Carolina.

And an excise is an indirect tax on the consumer and not a direct tax on property. (Patton v. Brady, 46 Law Edition, 718.)

5. Because the tax levied by the said ordinance is not a double tax since no other analogous tax is collected within the municipal district of Carolina, and because, even if it be conceded that such analogous tax exists, the ordinance would be legal according to the final decision of the Supreme Court of Washington that a general tax and an excise tax may be levied at the same time upon property. (Patton v. Brady, 46 Law Ed. 720.)

6. Because no irreparable injury is caused by the collection of the tax in question since, were the ordinance void, such collection would be of something not due and the amount unduly collected could be recovered in an action brought under section 1796 of the Revised Civil Code or under the provisions of Act No. 35 of March 9, 1911, provided that the proper objection or protest is made at the time of payment.

7. Because under section 1796 of the Revised Civil Code and Act No. 35 of March 9, 1911, there is an adequate ordinary remedy which the plaintiff can avail itself of should the ordinance be really null and void as alleged in the complaint.

II. The defendant is also of the opinion that a reversal of said order lies even on the hypothesis that the ordinance was null and void or that the excise tax created thereby was oppressive and unjust.

1. Because, since there is an adequate remedy in our ordinary procedure, a writ of injunction would not lie even if the statute or the ordinance should be unlawful, unfair or oppressive, since the plaintiff would not have to resort to a multiplicity of actions to enforce any right he might have.

It was so decided by the Supreme Court of the United States of America on different occasions as witness the following excerpts:

"a. The illegality of the tax and the threatened sale of the shares for its payment constitute, of themselves alone, no ground for such [fol. 15] interposition (of an injunction proceeding). * * *

"No court of equity will, therefore, allow its injunction to issue to restrain their action (the action of the officer in charge of collecting the tax) except where it may be necessary to protect the rights of the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law. It must appear that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury. In the cases where equity has interferred, in the absence of these circumstances, it will be found, upon examination, that the question of jurisdiction was not raised, or was waived. Dows v. City of Chicago, 20 Law Ed. (U. S.) 65, 66.

"b. Taxes may be and often are oppressive to the persons and corporations taxed; they may appear to the judicial mind unjust and even unnecessary, but this can constitute no reason for judicial interference. (Supreme Court of the United States of America. Case of Patton v. Brady, 46 Law Ed. 713, 719, 720.)

"c. It has been repeatedly decided that neither the mere illegality of the tax complained of nor its injustice nor irregularity of themselves, give the right to an injunction in a court of equity.

"One of the reasons why a court should not thus interfere, as it would in any transaction between individuals, is, that it has no power to apportion the tax or to make a new assessment, or to direct another to be made by the proper officers of the State. * * * In this manner it may, by enjoining the levy, enable the complainant to escape wholly the tax for the period of time complained of, though it be obvious that he ought to pay a tax if imposed in the proper manner. These reasons, and the weight of authority by which they are supported, must always incline the court to require a clear case for equitable relief before it will sustain an injunction against the collection of a tax. * * * Supreme Court of the [fol. 16] United States, Taylor v. Secor., Miller v. Jessus, Lieb v. Kidder, 23 Law Ed. 663 to 675.

"d. Not only the Supreme Court of the United States (which is more than sufficient to sustain our theory) but the States courts as well have arrived to the same conclusions on different occasions. The following are some among the numerous decisions applicable to the case at bar: Alabama Gold Life Insurance Co. v. Lott, 54 Ala. 499. Burnos v. Atchinson, 2 Kansas, 464. (The matter in question in this case was a municipal tax 'to pay interest upon bond issued for railroad stock and tax levied for street improvement in addition to one levied for general city revenue'.)"

III. Summing up the jurisprudence, we will say: That an extended and careful study of it shows that the theory of law sustained by the authorities, including among them the Supreme Court of the United States, is that when it is sought to restrain the collection of a tax imposed by a State the courts cannot intervene by injunction unless the law imposing the tax is unconstitutional, and that when the tax is imposed by a municipal corporation an injunction can be granted only when it is shown that the tax is not only illegal, but that its collection would cause irreparable damages for the repair of which there is no adequate remedy by ordinary proceedings.

"But so long as the legislation is not colorable merely, but is confined to the enactment of what is in its nature strictly a tax law, and so long as none of the constitutional rights of the citizen are violated in the directions prescribed for enforcing the tax, the legislation is of supreme authority. Taxes may be and often are oppressive to the persons and corporations taxed; they may appear to the judicial mind unjust and even unnecessary, but this can constitute no reason for judicial interference. (Patton v. Brady, 46 Law Ed. (U. S.) 713.)"

In the case of Exchange Bank of Columbus v. Hines, 3 Ohio St. 1, the court denied the injunction because there was an adequate [fol. 17] remedy by ordinary proceedings, notwithstanding the fact that the tax was unconstitutional.

In the cases of Dewitt v. Hayes, 2 Cal. 469; Robinson v. Gaart, 6 Cal. 275, and Merrill v. Gorham, 6 Cal. 41, the Supreme Court of California held that when an illegal tax is imposed there is an adequate remedy by ordinary proceedings and an injunction cannot be be interposed.

In the so-called States Railroads Taxes Cases the Supreme Court of the United States said:

"We do not propose to lay down in these cases any absolute limitation of the powers of a court of equity in restraining the collection of illegal taxes; but we may say, that, in addition to illegality, hardship, or irregularity, the case must be brought within some of the recognized foundations of equitable jurisdiction, and that mere errors or excess in valuation, or hardship or injustice of the law, or any grievance which can be remedied by a suit at law, either before or after payment to taxes, will not justify a court of equity to interpose by injunction to stay collection of a tax." State Railroad Tax Cases, 92 U. S. 614.

In support of what we have said regarding the aforesaid doctrine in so far as it appertains to acts of municipal corporations, we cite the United States Supreme Court case of Dows v. Chicago, 20 Law Ed. 65, to which we have already referred and which has extraordinary importance and application to the case at bar because it treats of a petition for an injunction to restrain the collection of a tax imposed by the City of Chicago upon the capital stock of the Union National Bank of Chicago. The court said:

"The illegality of the tax and the threatened sale of the shares for its payment constitute of themselves alone no ground for such interposition. There must be some special circumstances attending a threatened injury of this kind, distinguishing it from a common trespass, and bringing the case under some recognized head of equity jurisdiction before the preventive remedy of injunction can be invoked."

[fol. 18] IV. Even if there were no such jurisprudence as we have cited, the said order should be set aside.

a. Because subdivisions 3 and 6 of section 4 of our injunction Act, approved March 8, 1906, expressly prohibits it. They read as follows:

"An injunction cannot be granted:

"3. To prevent the execution of a public statute by officers of the law for the public benefit.

"6. To prevent a legislative act by a municipal corporation."

b. Because Act No. 35 of March 9, 1911, positively forbids the issuance of any writ for the prevention of the collection of taxes or revenues. Section 5 of that Act reads as follows:

"Sec. 5. Be it further enacted that no writ for the prevention of the collection of any revenue claimed, or to hinder and delay the collection of the same, shall in any wise issue, either supersedeas, prohibition, or any other writ or process whatever; but in all cases in which, for any reason, any person shall claim that the tax so collected was wrongfully or illegally collected, the remedy for said party shall be as above provided, and none other."

c. Because the plaintiff has not complied with Rule 16 of this court, inasmuch as it has not notified the defendant of its purpose to ask this court or its judge at any fixed date for a continuation of the said order; therefore it should be held that the order lapsed and became without effect ten days after it had been made, or on March 27, 1921.

d. In conclusion, the said order should be set aside because the complaint does not allege facts sufficient to constitute a cause of action for an injunction.

San Juan, Porto Rico, April 4, 1921.

Juan B. Soto, Attorney for the Defendant.

[fol. 19] Jurat showing the foregoing was duly sworn to by Juan Perez Cami omitted in printing.

IN DISTRICT COURT OF SAN JUAN

PETITION TO SET ASIDE ORDER FOR PRELIMINARY INJUNCTION

The petition of the plaintiff in this case that this court order an injunction to issue is based on two conclusions of law:

1. The nullity of the ordinance.

2. The lack of a speedy and adequate remedy in ordinary proceedings to repair whatever damages the execution of the ordinance, if null and void, might cause the plaintiff.

Consequently the issue raised by this suit should be maintained about these two extremes as the axes around whose circumference the whole question revolves.

[fol. 20] In the pleading filed on March 30th in compliance with the rule to show cause issued by this court on March 17th we have set out the reasons on which we base our opinion that a preliminary injunction (and consequently a permanent injunction) does not lie; but not having exhausted all of the jurisprudence which indorses our opinion, we are now going to present simply such arguments and such citations as are not included in the said pleading, and to them we very respectfully call the attention of this Honorable Court.

The plaintiff understands that the tax is void because in its opinion no tax is valid without establishing as a basis for it the valuation of the property; or, in more scientific terms, the plaintiff believes that to be legal every tax should be ad valorem and that no special tax imposed by our municipal assemblies can be valid.

Examining with ordinary care our Municipal Law, especially subdivision 4 of section 26 and subdivision "F" of section 49, the conclusion is unhesitatingly reached that our statutes clearly authorize not only the imposition within certain limits of direct taxes on property, but also the imposition of municipal excises.

Subdivision 4 of section 26 reads: "That the municipal assembly shall have sole authority to levy taxes and excise taxes of any kind."

That is to say that by enacting the said law the municipalities are clearly authorized to impose not only direct taxes based on a previous valuation or assessment of the property, but also to impose excise taxes, or taxes based on a unit of weight, as in the case at bar, or on a unit of measurement. And the only restriction of that authority is that established in said subdivision "F" of section 49.

Then, except in a case in which the object or matter of taxation is also the object or matter of any federal or insular tax, the authority of the Assembly to levy excise taxes is unlimited if it is agreed to by two-thirds of the members of the Assembly.

When the law authorizes the imposition of an excise tax it expressly authorizes a tax without previous assessment of the property, for all [fol. 21] courts and commentators on law agree that an excise tax is not an ad valorem tax, but is almost always special.

We invite the attention of this Honorable Court to the cases cited in the said pleading which is found in the record of this case. And as further authority we now cite the case of the People of the State of New York v. Edward Reardon, decided by the Court of Appeals of the State of New York and reported at page 314 of Volume 8, L. R. A. (N. S.). In that case (page 321, second column) the court said:

"Third. It is claimed that the statute is invalid because it fixes the amount of the tax regardless of the value of the certificates sold or of the sum for which they are sold. The tax in question is an excise tax which need not depend upon any principle of valuation, or on any notice to the taxpayer. It is not a direct tax governed by the rule of appraisement, but an indirect tax governed by the rule of uniformity. It is not like a general tax upon the bulk of property in the state, which must be paid in any event; for if there is no sale there is no tax. Neither notice nor grievance day is required, for no valuation is made except by the statute itself, and there is no provision in either Constitution requiring such a tax to be laid on an ad valorem basis."

As may be seen, in that case the same ground of nullity is invoked as the plaintiff invokes in the complaint. Yet the court held that the tax was an excise tax and therefore did not depend for its validity on any principle of valuation.

Every tax is either special or ad valorem. Excise taxes are almost always special taxes and consequently need not depend for their validity on a previous assessment or valuation of the property. That was undoubtedly the idea which guided the Court of Appeals of New York in holding as it did, and there is no reason why that same principle should not be the guide of this court in deciding the case at bar, for it has been the guide of the Supreme Court of the United States in similar cases.

In order to establish clearly the criterion that the tax imposed [fol. 22] by the aforesaid ordinance is valid, we now have only to answer the following question: Is the tax levied by the said ordinance a direct tax or an excise tax, as we allege?

Only a glance at section 1 of the ordinance is sufficient for any person moderately informed on the principles of taxation to understand that it levies an excise tax, or a special tax of whose nature no doubt can possibly exist.

As may be observed by reading the ordinance, it levies, as said by the New York court in the case cited, an indirect tax governed only the rule of uniformity and not by the rule of appraisement.

The tax is imposed on each quintal of sugar manufactured, that is, the weight is taken as a standard and not the value, it being, therefore, a special or excise tax.

See also the cases cited in the answer to the rule to show cause, filed on March 30th, at page 37 of Volume 26 Ruling Case Law. Also the case of Patton v. Brady (U. S.), 46 Law Ed. 718, cited in the said answer.

As regards the other points at issue, or the second question raised by the plaintiff, we call the attention of the court to the said answer where it cites all authority pertinent to this case and where it specifically confutes all of the grounds of the petition in this case.

Therefore, we repeat the prayer that the order for a preliminary injunction made in this case be set aside, with such other relief as may be proper.

San Juan, Porto Rico, April 19, 1921.

Juan B. Soto, Attorney for the Defendant.

Received copy this nineteenth day of April, 1921.

Cay. Coll Cuchi, Attorney for the Plaintiff.

[fol. 23] IN DISTRICT COURT OF SAN JUAN

STIPULATION TO HEAR CASE ON BRIEFS ALREADY FILED—Filed May 9, 1921

Now come the plaintiff and the defendant by their respective attorneys and show:

That inasmuch as the defendant admits the existence of the ordinance transcribed in the complaint in this case, the parties by

their attorneys have agreed to pray the court to dispose of the objection to the preliminary injunction and the petition for a permanent injunction simultaneously.

To that effect they submit the principal case, or the petition for a permanent injunction, on the briefs already filed in this case and pray this Honorable Court to approve the said stipulation and consequently to consider and decide on the said briefs not only the question relating to the preliminary injunction, but also the question of the permanent injunction.

San Juan, Porto Rico, May 7, 1921.

Cay. Coll Cuchi, Attorney for the Plaintiff. Juan B. Soto, Attorney for the Defendant.

[File endorsement omitted.]

IN DISTRICT COURT OF SAN JUAN

OPINION—June 11, 1921

The Municipal Assembly of Carolina adopted an ordinance on February 17, 1921, providing that on and after July 1, 1921, and for the fiscal year 1921-1922 there should be levied and collected by the Commissioner of Finance a tax of ten cents on each and every quintal of sugar manufactured in the municipal district of Carolina, its collection to be regulated by statements furnished by the respective manufacturers.

The Municipal Commissioner of Finance was authorized to investigate from time to time, either personally or by his employees, and ascertain whether the statements made by the sugar manufacturers were true statements of the number of quintals manufactured. [fol. 24] The collection of the said tax was to be made in any one of the months of February, April or July, 1922. The money so collected was to be used for a technical study of plans of villages which the municipality proposed to develop and of some plans of economical buildings for schools and for residences of teachers in the villages, for the purchase of lands for the villages and the organization of them and of school farms. The ordinance provided also that any person, partnership or corporation who, by false propaganda or insinuations, or by any other malicious or unlawful means, attempts to infringe, or infringes, or causes to be infringed, or who attempts to cause to be delayed, or causes to be delayed, the fulfillment of any of the provisions of the ordinance, should be fined from five to fifty dollars and (sic) imprisoned from five to fifteen days, or both, at the discretion of the court.

In the said ordinance it is not stated who must pay the tax imposed on the sugar,—whether the manufacturer while he may have it in his possession, although he may not be its owner; or the planter of the sugar cane, if he is the owner of the sugar; or the purchaser

of the sugar before it is manufactured, or at the moment of its manufacture, or after it is manufactured and before it is taken from the factory; or any other person.

The plaintiff is a partnership engaged in the manufacture of sugar and alleges in the complaint that by virtue of that ordinance the defendant purposes to collect from it the sum of ten cents on each and every quintal of sugar manufactured by it and attempts to compel it to furnish a statement of its product showing the number of sacks which belong to the factory and the number of sacks which belong to the planters, and, in general, attempts to compel it to comply with each and all of the provisions of the said ordinance. The plaintiff alleges that the ordinance is null and void and without any kind of legal effect for various reasons which we shall discuss presently, praying the court to order that the defendant Municipal Commissioner of Finance of Carolina, personally or through his agents, abstain from all acts tending to effect the collection of the said tax.

[fol. 25] A temporary restraining order was granted and the defendant appeared by his attorney and opposed the complaint generally and the continuation of the temporary restraining order granted by the court. By a stipulation of the parties of May 7, 1921, the case was submitted and the court was requested to dispose of the opposition to the temporary restraining order and the petition for a permanent injunction simultaneously. Hence, the court considers that it is authorized by virtue of that stipulation to decide all of the questions of law raised by the pleadings that may be sufficient for disposing of the case finally. To that effect, of the questions of law raised by the pleadings that may be sufficient for disposing of the case finally. To that effect, of the questions involved the court will examine those that are sufficient for arriving at a final conclusion.

First. It is alleged that the Municipal Assembly of Carolina has no authority to levy a special tax except in the cases enumerated in the Municipal Law. It appears that the ordinance was adopted by the Assembly on the basis of the provisions of sections 8 and 9, subdivision 4 of section 26 and subdivision "F" of section 49 of Act No. 85 of the Legislative Assembly of Porto Rico, approved July 31, 1919.

Section 8 of that Act provides that all expenses incurred by the government of each municipality shall be paid by the municipality, which shall have power to provide such funds as may be necessary therefor in accordance with the provisions of the Act. Section 9 confers upon the municipalities full legislative and administrative powers in all matters of a purely local nature and connected with public works, education, etc., but provides that such powers shall be exercised subject to the laws of Porto Rico and that no ordinance or resolution shall be passed or action taken which in any way conflicts with any of said laws. Subdivision 4 of section 26 provides that the Municipal Assembly shall have sole authority "to levy taxes and excise taxes of any kind." And by subdivision "F"

of section 49 "the municipal revenues shall consist of any other impost, excise or tax that may be levied by two-thirds of the members of the Municipal Assembly, provided the object or matter of [fol. 26] taxation is not also the object or matter of any federal or insular tax." Can a municipal corporation, under the statutes cited, establish a tax of ten cents on each and every quintal of sugar manufactured in the municipality as was done by the ordinance which we are considering?

Among the many definitions which have been given of a municipal corporation we may select two which include the broadest idea in the historical evolution of municipalities from the time of the ancient Roman municipality, conglomerated of citizens of Rome with ample powers of self-government, to the present great cities of our epoch. "A municipal corporation is an agency of the state for the exercise of some of the functions of the government." 82 Am. St. Rep. 52, L. R. A. 814. "A municipal corporation is merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of the government." Philadelphia v. Fox, 64 Penn. State, 169-180. That idea of the subordination of the municipality to the State is expressly included in the provisions of the Organic Act of Porto Rico, especially in section 3, which provides that "taxes and assessments on property, internal revenue, and license fees, and royalties for franchises, privileges, and concessions may be imposed for the purposes of the Insular and Municipal governments, respectively, as may be provided and defined by the Legislature of Porto Rico." Section 25 provides that all local legislative powers in Porto Rico shall be vested in the Legislature, with no other restrictions than those established by that Act (section 34). And section 37 expressly authorizes the Legislature to create, consolidate and reorganize the municipalities so far as may be necessary, and to provide and repeal laws and ordinances therefor. It is, then, beyond all doubt that as the municipalities are creatures of the State and continuators of its existence by the will of the sovereign, they have only such powers as the State expressly confers upon them.

Referring only to the power to impose taxes, said section 3 of our Organic Act authorizes the Legislature to provide and define taxes and assessment for the purposes of the insular and municipal governments. In a word, any tax that a municipality may desire to [fol. 27] impose must be previously provided and defined by the Legislature of Porto Rico. And not only has that been the law since the enactment of the Jones Act, but it was the law under the Foraker Act. In section 1869 of the Revised Statutes of Porto Rico the Legislature authorized the municipalities to derive their revenues from certain enumerated sources, provided that "no taxes, imposts or excises other than those herein enumerated shall be levied by a municipality, unless expressly authorized by this Act, or by the laws of Porto Rico." Subsequently, by the Act of 1914 authorizing the levy of certain internal revenue taxes, express authorization was given to the municipalities to collect the taxes clearly defined.

We think, therefore, that the power granted under paragraph "F" of section 49 of the new Municipal Law for the collection of "any other impost, excise or tax that may be levied by two-thirds of the members of the municipal assembly, provided the object or matter is not also the object or matter of any federal or insular tax," is subordinate to the general principle recognized by the Legislature prior to the enactment of the Jones Act and expressly reaffirmed in section 3 thereof, to the effect that such tax or assessment "must be provided and defined by the Legislature of Porto Rico." The tax of ten cents on each quintal of sugar provided for by the Municipality of Carolina has not been provided or defined by the Legislature of Porto Rico. No other definition will express it, inasmuch as to define is to determine, to fix, to describe, to characterize, to distinguish with exactness and accuracy.

Second. Supposing that the foregoing interpretation is not correct and that the Legislative Assembly, in delegating powers to the municipalities by virtue of said section 49, granted to them, or could grant to them without infringing the provisions of section 3 of the Organic Act, implicit authority to impose excise taxes of all kinds, and supposing that the tax under consideration is an excise tax and the article taxed was not the object or matter of any other insular tax—a question which we cannot now decide if we adhere [fol. 28] to the record of the case—let us see whether the ordinance is valid from any other point of view.

The tax under consideration was one of ten cents on each quintal of sugar. If that tax is lawful there is no doubt that the Municipality of Carolina could reduce it to five cents or increase it to twenty-five cents at its pleasure and that under the same theory every municipality of the island could do the same. The result would be a manifest infraction of the paragraph of section 2 of the Organic Act which says: "That the rule of taxation in Porto Rico shall be uniform." It is elementary that the constitutional principle of uniformity of taxation in force in Porto Rico and in all of the United States requires identical plans and identical methods in the imposition of taxes, although it does not exact uniformity in the manner of collecting them. Knowlton v. Moore, 178 U. S. 41. If each municipality of Porto Rico, initiating the example of Carolina, should levy a tax which, according to the law invoked, could vary as regards the plan and method; if each municipality should levy a distinct tax on each quintal of sugar and one should exact payment by the manufacturer, another by the owner, another by the merchant who sold it to the consumer, etc., things which could be done under the theory of the municipal assembly in this case, the result would be a violation of the constitutional principle of uniformity. And if some of the municipalities of the island should levy the tax and others should not, the result would be identical. Therefore, the ordinance under consideration is unconstitutional in every light because it does not obey a uniform plan nor a uniform method.

Third. The tax was imposed on each and every quintal of suga manufactured. It is an excise tax, or an occupation tax or a prop erty tax. The Municipal Assembly considers it an excise tax Whatever it is, it is a tax and a part of the lawful internal revenue therefore it is included in the provision of the Organic Act whic we have quoted referring to the uniformity of taxation. If it an occupation tax, that is, a tax that must be paid exclusively b the manufacturer of the sugar and no one else, we must come t the conclusion that it is unlawful because under the Municipal La [fol. 29] the municipality is authorized to levy a tax for the carry ing on of that industry. And is we consider that it is an additiona tax on the property, we must also conclude that it is unlawful, fo it contravenes the same statute (subdivision F of section 49 of th Municipal Law) from which it derives its authority, inasmuch a the municipalities obtain a large part of their revenues from th direct tax on the value of property. The rate of ten cents for eac quintal of sugar would not produce at times the one per cent autho ized by subdivision c of section 2 of Act No. 70 of April 13, 1916, a amended by the Municipal Law, as a permissible surcharge, but w all know and cannot ignore the fact, because it is one of public an notorious knowledge, that the price of sugar manufactured in Port Rico is subject to the fluctuations of the New York market and tha in the course of a year that fluctuation has varied more than 50 per cent, and it might very readily occur than in selling the suga at the rate of five dollars the quintal, which is the present price o it and which the court cannot ignore because it is a public and no torious fact, that surcharge on the value of the sugar is apparentl greater than the one per cent authorized by law as a surcharg From all of these points of view the ordinance is contrary to the law

Fourth. Ten cents per hundredweight of sugar, whether paid b the manufacturer or by the planter, is an arbitrary tax created witl out consideration of the cost of production. It is a fact of genera knowledge that the wages of sugar plantation hands in Porto Ric went up in the short space of two years from seventy-five or eight cents to two dollars and fifty cents or three dollars per day an came down again to one dollar and twenty-five cents or one dolla and fifty cents. A fixed tax of ten cents per hundredweight, with out considering these fluctuations or the aforesaid fluctuations i the market price of the article taxed, is not only arbitrary and op pressive, but also confiscatory and destructive of the industry; an we cannot overlook the fact that at least one-third of the populatio of Porto Rico depend upon the sugar industry for their subsistenc

Fifth. There remains to be decided the question of whether o [fol. 30] not the remedy resorted to by the plaintiff is the prope one. As a question of principle generally, relief by injunctio would not be appropriate. Subdivisions 3 and 6 of section 4 of th Injunction Act of March 8, 1906, provide that "an injunction can not be granted to prevent the execution of a public statute by office of the law for the public benefit or to prevent a legislative act by municipal corporation." Likewise section 5 of Act No. 35 of Marc

9, 1911, provides "that no writ for the prevention of the collection of any revenue claimed, or to hinder and delay the collection of the same, shall in any wise issue," but these statutes cannot be applied to the case of an ordinance which is void and ineffective and apparently infringes the laws in force, particularly the Organic Act, which is the Constitution of Porto Rico, in its provisions regarding uniformity in the imposition of taxes and the exclusive and non-delegatory power of the Legislative Assembly of Porto Rico to levy and define taxes, imposts, licenses, etc., for the support of the insular and municipal governments. In the case at bar the injunction prayed for is the proper remedy. See the decision of the Circuit Court of Appeals of Boston which reversed its own judgment in the case of Camunas v. New York & Porto Rico S. S. Co., 260 Federal. 40, thus affi-ming the judgment of the United States District Court for Porto Rico in that case. See also the recent judgment of the United State Supreme Court in Dawson v. Kentucky Distilleries, etc., Adv. Ops. 326.

For the reasons stated the following judgment is rendered:

This case was submitted for the consideration and final decision of the court by virtue of a stipulation made by the attorneys for both parties and approved by the court; and having duly considered the complaint, the pleading in opposition to the temporary restraining order, the answer to the complaint and the briefs of both parties, for the reasons stated in the foregoing opinion the court sustains the complaint and therefore orders that the defendant, Juan Perez Cami, Commissioner of Finance of Carolina, personally as such Commissioner and by his agents or employees or by any other person under his authority, abstain from an act tending to effect the collection of the tax imposed by the ordinance of February [fol. 31] 17, 1921, adopted by the Municipal Assembly of Carolina and the object of this suit, which is adjudged null and void and without legal effect, with the costs against the defendant.

M. Rodriguez Serra, Judge of the Second Section of the District Court of San Juan.

Attest: Q. Negron Sanjurjo, Clerk.

IN DISTRICT COURT OF SAN JUAN

JUDGMENT—June 11, 1921

This case was submitted for the consideration and final decision of the court by virtue of a stipulation made by the attorneys for both parties and approved by the court; and having duly considered the complaint, the pleading in opposition to the temporary restraining order, the answer to the complaint and the briefs of both parties, for the reasons stated in the foregoing opinion the court sustains the

complaint and therefore orders that the defendant, Juan Perez Cami, Commissioner of Finance of Carolina, personally as such Commissioner and by his agents or employees or by any other person under his authority, abstain from any act tending to effect the collection of the tax imposed by the ordinance of February 17, 1921, adopted by the Municipal Assembly of Carolina and the object of this suit, which is adjudged null and without legal effect, with the costs against the defendant.

Rendered in open court and entered at San Juan, P. R., this eleventh day of June, 1921.

M. Rodriguez Serra, Judge.

Attest: Q. Negron Sanjurjo, Clerk.

(Entered at pages 57 to 59 of judgment docket No. 8 of this court and section.)

In District Court of San Juan

Notice of Judgment

To Attorney Juan B. Soto, San Juan, P. R.:

The undersigned clerk hereby notifies you that the Honorable Court of this district rendered judgment in this case on June 11, 1921, and it was duly entered in the corresponding docket as shown [fol. 32] in the record of this case, where you may inform yourself in detail of the terms of the said judgment.

And you being or representing the party prejudiced by the judgment, for which reason you may appeal from it, I address this written notice to you and have filed a copy of it according to section 2 of the Act of March 9, 1911, to amend sections 92, 123, 227 and 229 of the Code of Civil Procedure.

San Juan, P. R., June 13, 1921.

Q. Negron Sanjurjo, Clerk District Court, Section 2.

I certify that on this date I attached this notice to the record of the case and sent a copy of it to the attorney for the defendants at his residence in San Juan, P. R.

San Juan, P. R., June 13, 1921.

Q. Negron Sanjurjo, Clerk District Court, Section 2.

In District Court of San Juan

Notice of Appeal—Filed June 18, 1921

To the Clerk of the Court and to the Attorney Cayetano Coll y Cuchi, attorney for the plaintiff:

The defendant by his undersigned attorney notifies you that he hereby takes an appeal to the Supreme Court of Porto Rico from

the judgment rendered in this case by the above-mentioned District Court.

San Juan, Porto Rico, June 18, 1921.

Juan B. Soto, Attorney for Defendant-Appellant.

Received copy this eighteenth day of June, 1921.
Cay. Coll Cuchi, Attorney for Plaintiff-Appellee.

[File endorsement omitted.]

[fol. 33] IN DISTRICT COURT OF SAN JUAN

STIPULATION RE TRANSCRIPT OF RECORD

We, Cayetano Coll y Cuchi and Juan B. Soto, attorneys for the plaintiff-appellee and the defendant-appellant respectively, for the purposes of the appeal taken in this case,

Certify that the foregoing is a true and exact copy of the whole record and judgment-roll in civil action No. 2300 brought in the District Court for the Judicial District of San Juan, Section 2, by Central Victoria, Ltd., as plaintiff, against Juan Perez Cami, Municipal Commissioner of Finance of Carolina, as defendant, and necessary for the purposes of this appeal.

We certify also that no statement of the case has been prepared because no evidence was examined, as appears from the stipulation transcribed on pages 37 and 38 of the foregoing transcript.

San Juan, Porto Rico, June 20, 1921.

Cay. Coll Cuchi, Attorney for Plaintiff-Appellee. Juan B. Soto, Attorney for Defendant-Appellant.

Received copy this twenty-second day of June, 1921.
Cay. Coll Cuchi, by Gust. Cruzado Silva, Attorney for Plaintiff-Appellee.

IN SUPREME COURT OF PORTO RICO

No. 2507

CENTRAL VICTORIA, LTD., Plaintiff and Appellee,

v.

JUAN PEREZ CAMI, Municipal Commissioner of Finance of Carolina, Defendant and Appellant

Appeal from the District Court of San Juan, Section 2

OPINION—April 28, 1922.

Mr. Justice WOLF:

The Municipality of Carolina passed an ordinance whereby it imposed a tax of ten cents on every hundredweight of sugar manufactured in the municipality. The court below held the ordinance invalid on various grounds. The appellant has filed an assignment [fol. 34] of errors, but improperly in that assignment also outlines the argument. The outline of the argument might be contained in an index to the brief or at the beginning of the discussion of each error, but the assignment of errors should contain nothing but the errors in their absolute form.

The first assignment of error is that the ordinance is unconstitutional because in violation of section 3 of the Organic Act. We have elaborately discussed this question in the case of Fantauzzi v. Municipal Council, ante, p. —, and we have freely used brief of counsel for appellant.

The second assignment of error relates to the alleged lack of uniformity. We have also discussed this in the Fantauzzi case, supra, and decided that an excise tax like the one before is not invalid on this account.

The third assignment of error involves the question whether this tax has already been covered by any insular tax. This question we also discussed in the Fantauzzi case, supra. Appellant also maintains that the power to impose a license tax was granted to the municipalities, but that there was no showing that the municipality in this case had exercised the power. Indeed appellant implies that it had not used the power. There is force in appellant's argument, but we prefer to base our decision on the more general lines of the Fantauzzi case.

The fourth assignment of error is concerned with the nature of the tax, whether a property tax or not and hence double or prohibited.

That this should be considered as a tax on the process of manufacturing and not a tax on property as such is an object of our discussion in Fantauzzi v. Municipal Council, supra. As shown therein, even when articles manufactured are taxed as such the tax is supposed to fall on the occupation, manufacture or business and not on

property. Patton v. Brady, 184 U. S. 608; Stratton's Independence v. Howbert, 231 U. S. 399, 414, and cases.

In his fifth assignment of error appellant discusses the alleged unreasonableness of the ordinance. The court implies that the ordinance would be confiscatory, but no such showing was made. We [fol. 35] are not satisfied with the reasoning of the court in this regard. The court says: "Ten cents per hundredweight of sugar, whether paid by the manufacturer or by the farmer, is an arbitrary tax, created without consideration of the cost of production. It is a fact of general knowledge that the wages of sugar plantation hands in Porto Rico went up, in the short space of two years, from seventy-five or eighty cents to two dollars and fifty cents or three dollars per day, and came down again to one dollar and twenty-five cents or one dollar and fifty cents. A fixed tax of ten cents per hundredweight, without considering these fluctuations or the above mentioned fluctuation in the market price of the article taxed, is not only arbitrary and oppressive but also confiscatory and destructive of the industry; and we cannot overlook the fact that at least one-third of the population in Porto Rico depends upon the sugar industry for its maintenance." The courts cannot anticipate the variations in the sugar market and complainant, as we have indicated, would have to show that the rate was oppressive or excessive, or even confiscatory.

The sixth alleged error relates to the question whether injunction is the proper remedy in a case of this kind. The court below seems disposed to admit that ordinarily an injunction would not lie to review a municipal ordinance, but holds that injunction would lie when the ordinance was unconstitutional. The municipal law of 1919, laws of that year, page 722, perhaps leaves the question a little in doubt, although section 65 (b) would expressly only permit an injunction when the ordinance infringed constitutional rights, but not to test the validity in general. Such a right would seem to be given by means of a certiorari under section 65 (a). We incline to the view that injunction does not lie especially, as it would seem to be prohibited by the injunction laws of 1906. In any event as we have held that the ordinance was constitutional the writ would not lie.

The court, besides, in its opinion says that the ordinance is not clear inasmuch as it does not say who should pay the tax, whether the colono or the owner of the mill. But the ordinance says that ten cents shall be collected on every hundredweight of sugar manufac- [fol. 36] tured and we decide that prima facie it is the manufacturer who must pay the tax.

Finding no reason why this ordinance should be declared unconstitutional or void the writ in this case did not lie and the order must be reversed and the bill dismissed without costs.

Adolph G. Wolf, Associate Justice.

IN SUPREME COURT OF PORTO RICO

JUDGMENT—April 28, 1922

For the reasons stated in the foregoing opinion this court decides that it should reverse, *as* does hereby reverse, the judgment appealed from rendered by the District Court of San Juan, Second Section, on June 11, 1921; and to annul, as does hereby annul, the writ issued in this case, and therefore dismisses the complaint, without special imposition of costs. Let this judgment be duly communicated.

So we command, pronounce and sign.

Emilio Del Toro, Adolph G. Wolf, Pedro De Aldrey, H. M Hutchison.

IN SUPREME COURT OF PORTO RICO

PETITION FOR APPEAL—Filed June 19, 1922

The complainant herein, Central Victoria, Ltd., feeling itself aggrieved by the decree entered by the said court on the twenty-eighth day of April, 1922, whereby it was decreed that the tax of ten cents on each quintal of sugar manufactured within the Municipality of Carolina, as imposed by the said municipality, was constitutional; now comes by its solicitor and attorney, Cay. Coll Cuchi, Esq., and petition the said court for an order allowing said complainant to prosecute an appeal from said decree to the Honorable United States Circuit Court of Appeals for the First Circuit under and according to the laws of Congress and the Statutes of the United States in such cases made and provided, and also that an order be made [fol. 37] fixing the amount of security which complainant shall give and furnish upon such appeal, and that upon the giving of such security all futher proceedings in this court be suspended and stayed until the determination of said appeal by the said United States Circuit Court of Appeals for the First Circuit.

Cay. Coll Cuchi, Attorney for Complainant.

IN SUPREME COURT OF PORTO RICO

ASSIGNMENT OF ERRORS—Filed June 19, 1922

I. The court erred in holding that the ordinance of the Municipal Council of Carolina of February 17, 1921, was constitutional and not in violation of section 3 of the Organic Act of Porto Rico.

II. The court erred in holding that the said ordinance of the Municipal Council of Carolina imposed a tax uniform within the constitutional limitations providing that all taxes must be uniform.

III. The court erred in holding that the tax imposed by the said ordinance of the Municipal Council of Carolina was not upon a subject of taxation already covered by an insular tax.

IV. The court erred in holding that the tax imposed by the said municipal ordinance of Carolina was not a tax on property.

V. The court erred in holding that the said municipal ordinance of Carolina does not impose a tax which is unreasonable and of a confiscatory nature.

VI. The court erred in reversing the judgment of the District Court of San Juan and dismissing the bill.

Cay. Coll Cuchi, Attorney for the Appellant in Error.

IN SUPREME COURT OF PORTO RICO

ORDER ALLOWING APPEAL—June 30, 1922

An appeal is allowed by the plaintiff, Central Victoria, Ltd., to the Circuit Court of Appeals for the First Circuit of the United [fols. 38-40] States from the judgment rendered by this court in the above-entitled case on April 28, 1922; and the bond to be given by the said appellant within the time allowed by law is fixed at the sum of fifteen thousand and seven hundred dollars ($15,700) for the suspension of the execution of the judgment and three hundred dollars ($300) to respond for the costs which the said appeal may cause the adverse party; and the appellant is granted a period of sixty days for preparing and translating the record which must be sent up to the said Circuit Court of Appeals for the First Circuit of the United States.

It is so ordered and signed by the Honorable Emilio del Toro, Chief Justice of the Supreme Court.

Emilio Del Toro, Chief Justice.

Attest: Joaquin Lopez, Secretary-Reporter.

IN SUPREME COURT OF PORTO RICO

ORDER AMENDING ORDER FOR BONDS—July 3, 1922

At the request of plaintiff-appellant this court hereby amends its order of June 30, 1922, to the effect that the bonds required in security of the damages and costs that the suspension of the execution of the judgment of this court and the appeal taken in this case may cause the adverse party may be furnished in a single document.

The court so ordered and the Chief Justice signs.

Emilio Del Toro, Chief Justice.

Attest: Joaquin Lopez, Secretary-Reporter.

BOND ON APPEAL FOR $16,000—Approved and filed; omitted in printing

---

[fol. 41] IN SUPREME COURT OF PORTO RICO

WRIT OF SUPERSEDEAS

UNITED STATES OF AMERICA, ss:

The President of the United States, the People of Porto Rico, to Hon. Manuel Rodriguez Serra, Judge of the District Court of San Juan, Second Section:

Whereas, attorney Cayetano Coll y Cuchi, in the name of Central Victoria, Ltd., has appealed to the Circuit Court of Appeals, First Circuit of the United States, from the judgment rendered by the Supreme Court of Porto Rico, on the twenty-eighth day of April, 1922, in the above-entitled case, and at the same time moved that the amount of the security be fixed for the suspension of the execution of the judgment in the said case pending the prosecution and consideration of the said appeal;

Whereas, the Hon. Emilio del Toro, Chief Justice of the Supreme Court of Porto Rico, by his order of June 30, 1922, allowed the said appeal and fixed at fifteen thousand and seven hundred dollars ($15,700) the amount of the security to be given by the plaintiff-appellant to respond for the damages which the defendant-appellee might suffer by reason of the appeal and to obtain the suspension of the execution of the judgment, fixing also at three hundred dollars ($300) the amount of the security to be given by the said appellant, Central Victoria, Ltd., to answer for the costs which the appeal might cause the defendant and appellee;

Whereas, the Supreme Court under date of July 3, 1922, and at the request of plaintiff-appellant amended its order of June 30, [fol. 42] 1922, to the effect that the bonds required for the security of the damages that the suspension of the execution of the judgment may cause the appellee, and for costs, might be presented in a single document;

Whereas, the plaintiff-appellant, Central Victoria, Ltd., on July 3, 1922, offered the said security which was given by Central Victoria, Inc., through Gabriel Soler, treasurer, as principal, and Pedro Giusti and Luis Rubert, as sureties, which was approved by the Supreme Court by its order of July 3, 1922, this Supreme Court ordering that the execution of its judgment in this case of April 28, 1922, be suspended and also that a writ of supersedeas to that effect be issued:

Wherefore, in compliance with the said order, you, Hon. Manuel Rodreguez Serra, Judge of the District Court of San Juan, Second District, are hereby commanded to suspend the execution of the judgment rendered in this case on April 28, 1922.

Present the Honorable Emilio del Toro, Chief Justice of the Supreme Court of Porto Rico.

In testimony of which I issue this writ in duplicate under my gnature and the seal of the court at San Juan, Porto Rico, this th day of July, 1922.

Joaquin Lopez, Secretary-Reporter. (Seal.)

SUPREME COURT OF PORTO RICO, MARSHAL'S OFFICE

Received this writ on its date and served the same by delivering true copy thereof to Honorable Manuel Rodriguez Serra, Judge the District Court of San Juan, Second District, at his office, in n Juan, Porto Rico, this sixth day of July, 1922.

S. C. Bothwell, Marshal.

---

ol. 43] CITATION—In usual form, showing service on Juan Perez Cami, omitted in printing

---

ol. 44] IN SUPREME COURT OF PORTO RICO

ORDERS EXTENDING TIME

September 1, 1922.

Upon motion duly made by appellant, Central Victoria, Ltd., e time for filing in the United States Circuit Court of Appeals r the First Circuit of the transcript of the record in this case is reby extended until November 2, 1922.

It was so ordered and signed by the Hon. H. M. Hutchison, sociate Justice of the Supreme Court, sitting.

H. M. Hutchison, Associate Justice.

Attest: Felipe Janer, Jr., Acting Secretary.

November 1, 1922.

Upon motion duly made by appellant the time for filing in the nited States Circuit Court of Appeals for the First Circuit of the nscript of the record in this case is hereby extended until ecember 31, 1922.

It was so ordered and signed by the Hon. H. M. Hutchison, sociate Justice of the Supreme Court, sitting.

H. M. Hutchison, Associate Justice.

Attest: Joaquin Lopez, Secretary-Reporter.

A true copy.

Joaquin Lopez Cruz, Secretary-Reporter, by Felipe Janer, Jr., Deputy-Secretary.

ol. 45] Translator's Certificate

I, Felipe Janer, Jr., Official Interpreter and Translator of the preme Court of Porto Rico, do hereby certify:

That the foregoing is a true and faithful translation of their respective originals as they appear on file and of record in this case.

In testimony whereof, I have signed this certificate, in the city of San Juan, Porto Rico, this fifteenth day of January, 1923.

Felipe Janer, Jr., Interpreter and Translator of the Supreme Court of Porto Rico.

Order—December 29, 1922

Upon motion duly made by appellant the time for filing in the United States Circuit Court of Appeals for the First Circuit of the transcript of the record in this case is hereby extended until January 30, 1923.

It was so ordered and signed by the Hon. Adolph G. Wolf, Acting Chief Justice of the Supreme Court.

Adolph G. Wolf, Acting Chief Justice.

Attest: Felipe Janer, Jr., Acting Secretary.

In Supreme Court of Porto Rico

Clerk's Certificate

I, Joaquin Lopez Cruz, Secretary-Reporter of the Supreme Court of Porto Rico, do hereby certify:

That the foregoing papers and proceedings had in the above-entitled case are true and faithful copies of their respective originals as the same appear on file and of record in this office and embodied in the transcript by the appellant; I further certify, that the translation of said papers and proceedings has been revised by the official interpreter and translator of the Supreme Court, [fol. 46] as shown by his certificate hereto attached and made a part of this transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of this court, in the City of San Juan, Porto Rico, this fifteenth day of January, 1923.

Joaquin Lopez, Secretary-Reporter of the Supreme Court of Porto Rico. (Seal.)

[Attached hereto are cancelled excise tax stamps amounting to $29.]

[fol. 47] In United States Circuit Court of Appeals

Opinion—February 5, 1924

Per Curiam:

This case is governed by our opinion in No. 1617, Successors of C. & J. Fantauzzi v. Municipal Assembly of Arroyo, Porto Rico, and the entry should be:

The judgment of the Supreme Court of Porto Rico is reversed with costs to the appellant in this court, and the case is remanded to that court for further action not inconsistent with this opinion.

IN UNITED STATES CIRCUIT COURT OF APPEALS

FINAL DECREE—February 5, 1924

This cause came on to be heard October 16, 1923, upon the transcript of record of the Supreme Court of Porto Rico, and was argued by counsel:

Upon consideration whereof, It is now, to wit, February 5, 1924, here ordered, adjudged and decreed as follows: The judgment of the Supreme Court is reversed, with costs to the appellant in this court, and the case is remanded to that court for further action not inconsistent with the opinion passed down this day.

By the Court.

Arthur I. Charron, Clerk.

IN UNITED STATES CIRCUIT COURT OF APPEALS

CLERK'S CERTIFICATE

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the printed pages numbered 1 to 47, inclusive, hereto prefixed, contain and are a true copy of the record and all proceedings to and including March 12, 1924, in the cause in said court numbered and entitled No. 1609, Cen-[fol. 48] tral Victoria, Ltd., Plaintiff, Appellant, v. Juan Perez Cami, Municipal Commissioner of Finance, Defendant, Appellee.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this twelfth day of March, A. D. 1924.

Arthur I. Charron, Clerk. (Seal of the United States Circuit Court of Appeals, First Circuit.)

IN SUPREME COURT OF THE UNITED STATES

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit

ORDER GRANTING PETITION FOR CERTIORARI—Filed June 2, 1924

On consideration of the petition for a writ of certiorari herein to the United States Circuit Court of Appeals for the First Circuit and of the argument of counsel thereupon had,

It is now here ordered by this Court that the said petition be, and the same is hereby, granted, the record already on file as an exhibit to the petition to stand as a return to the writ.

[redacted]

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923.

PETITION FOR A WRIT
OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE FIRST CIRCUIT.

JUAN PEREZ CAMI,
MUNICIPAL COMMISSION OF
FINANCE
Petitioner.

vs.

CENTRAL VICTORIA, LTD.
Respondent.

No.----------

To the Honorable, the Supreme Court
of the United States.

Juan Pérez Cami, Municipal Commissioner of Finance of the Municipality of Carolina, Porto Rico, by his counsel the undersigned, respectfully petitions this Honorable Court for a writ of certiorari to be addressed to the United States Circuit Court of Appeals for the First Circuit in the case entitled "Central Victoria, Ltd., plaintiff-appellant vs. Juan Pérez Gami, Municipal Commissioner of Finance, defendant, No. 1609," and in support of said petition respectfully shows.

I.

That on March 17th, 1921 respondent herein filed a verified petition for an injuction against your petitioner in the District Court for the Judicial District of San Juan, Porto Rico—Second Division, for the purpose of testing the legality of an

ordinance enacted by the Municipal Assembly of Carolina, P. R., imposing a tax of ten (10) cents upon the manufacture of every hundred weight of sugar manufactured within the Municipal of Carolina, alleging in said petition that the tax thus imposed was "illegal and null." (R. p, 1) and on the same date the court under a separate petition granted a preliminary injunction. (R. p. 6). On March 28th. 1921 your petitioner filed his verified answer denying all the allegations of the ordinance except those alleging the enactment of the ordinance; that under its terms your petitioner is authorized either personally or by the employees of his Department to proceed to ascertain whether the statements made by the respondent as to the amount of sugar manufactured was correct, and it was proposed to collect the tax (R. p. 9). By the allegations of its petition respondent was a corporation engaged in the manufacture of sugar within the Municipality of Carolina, Porto Rico. (R. p. 3).

No evidence was taken is support of the controverted allegations of the respondent's petitions, and by stipulation the case was submitted to the Court for decision. (R. p. 23) The Court adjuged the tax imposed by the ordinance to be null and void and permanently enjoined your petitioner from collecting said tax. (R. p. 31). Your petition the appealed from the said judgment to the Supreme Court of Porto Rico, which after argument and submission, on April 28th. 1922 by a unanimous decision, entered the following judgment:

> "For the reasons stated in the foregoing opinion this court decides that it should reverse as it does reverse, the judgment appealed from rendered by the District Court of San Juan, Second Section, on June 11th. 1921; and to annul as it does annul hereby, the writ issued in this case, and therefore dismisses the complaint, without special imposition of costs." (R. p. 36)

Thereupon the respondent took the case on appeal to the United States Circuit Court of Appeal for the First Circuit and after argument and submisions, the said Circuit Court of Appeals, on Februaray 5th. 1925 reversed the judgment of the Supreme Court of Porto Rico, handing down a PER CURIAM opinion reading as follows:

"This case is governed by our opinion in No. 1617, Successors of C. & J. Fantauzi v Municipal Assembly of Arroyo, Porto Rico." (R. p. 47).

(II)

A certified copy of the record of this case including the in the court to which the writ is asked to be addressed, is furnished herewith as an exhibit.

(III)

Your petitioner is advised that the judgment of the said Circuit Court of Appeals is final, and is erroneous, and that this Honorable Court would be pleased to require the said case to be certified to it for its review and determination under the act of Congress permiting causes made final in the Circuit of Appeals to be certified for revision.

(IV)

And your petitioner further says that the grounds for the issuance of this writ are as follows:

ASSIGNMENTS OF ERROR.

The circuit Court of Appeals erred:

(*a*) In holding that there had already been imposed a license tax upon the respondent herein for conducting the business of a sugar mill for the year 1921, when the Municipal Assembly of Carolina levied the tax upon the manufacture of sugar within the Municipality by the ordinance enacted February 17th, 1921, effective after July 1st, 1921.

(*b*) Assuming that a license tax had already been imposed upon respondent for the year of 1921 for conducting the business of a sugar mill, the Circuit Court of Appeals erred in holding that the tax upon the manufacture of sugar imposed by the ordinance of February 17th, 1921,

effective after July 1st, 1921, was double taxation and therefore invalid.

(*c*) In holding that it was the intention of the Legislature of Porto Rico that any excise tax which should be levied by the Municipality should be one other than those enumerated in Act No. 26 of the Legislature of 1914 re-enacted by the Legislature in 1920, (d) of section 9 of Act No. 9.

(*d*) In holding that the Municipality was not authorized to enact the ordinance of February 17th, 1921 by the Act of Congress of 1917 known as the Organic Act for Porto Rico, or by the Legislature of Porto Rico.

(*e*) In holding that the tax imposed under the ordinance of Feb. 17th, 1921, imposing a tax upon the manufacture of sugar was a constituent element of a business already taxed by a license tax, and was therefore and not effective.

(*f*) In reversing the judgment of the Supreme Court of Porto Rico which upheld the validity of the tax imposed by the ordinance of February 17th, 1921.

This controversy not only involves large sums of money due, to this Municipality, under the tax held to be invalid, but to other municipalities which have imposed the same tax, the collection of which the Municipal governments rely upon to meet expenses, already incurred, largely for educational purposes; but involves, as well the power of this Municipality and other municipalities in Porto Rico, to levy this or a similar tax upon the manufacture of sugar, the chief industry and source of wealth here. There is involved, also, the power of the municipal governments to impose a tax upon the manufacture of any goods, articles, or products manufactured by any one within their respective jurisdiction. If the taxing power be limited to the extent as held by the judgment of the Circuit Court of Appeals the Municipal income would be so reduced that the municipalities will not be able to carry the burden of public service and to discharge the obligations imposed upon them under section 9 of the Act No. 85 of the 2nd. Session of the Legislature of Porto Rico of 1919 and

Section 29 of Act 9 of the laws of 1920, reorganizing the municipalities of Porto Rico.

The said judgment of the Circuit of Appeals is directly at variance with at least three decisions of the Supreme Court of Porto Rico, and the well settled taxing policy, approved by these decisions.

A very grave situation must follow if the reversal of the judgment of the Supreme Court of Porto Rico be finally approved. It would be with great loss and prejudice to important public service imposed by law upon the municipalities, such as public education, roads, sanitation, and many others, that the municipal budget could at all be balanced.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued under the seal of the Court directed to the United States Circuit Court of Appeals for the First Circuit, commanding that Court to certify and to send to this Court on a day to be designated, a full and complete transcript of the record and all proceedings of the Circuit of Appeals in the said cause entitled "Central Victoria, Ltd. plaintiff-appellant vs. Juan Pérez Cami, Municipal Commissioner of Finance, defendan-appellee, No. 1607", to the end that same may be reviewed and determined by this Honorable Court; and that the said judgment of the said Circuit Court of Appeals be reversed, and for such other and further relief as may seen proper.

(Signed) *E. B. WILCOX,*

JUAN B.SOTO,
Counsel for Petitioner.

Juan Pérez Gami being duly sworn deposes and says: I am the petitioner herein and I have read the foregoing petition and same is true to the best of my knowledge, information, and belief.

(Signed) *Juan Pérez Camy.*

Subscribed and sworn to before me in San Juan, Porto Rico, on this the 7th. day of the month of April, 1924 by Juan Pérez Cami whom I personally know.
(SEAL)

(Signed) *J. VALLDEJULY RODRIGUEZ*
Notary Public.

CERTIFICATE OF COUNSEL.

We hereby certify that we have examined the foregoing petition; that in our opinion it is well founded and entitled to favorable consideration by this Court, and that it is not filed for the purpose of delay.

(Signed) *E. B. WILCOX,*

JUAN B. SOTO,

Counsel for Pettioner.

IN THE SUPREME COURT OF THE UNITED STATES

(OCTOBER TERM, 1923).

JUAN PEREZ CAMI,
MUNICIPAL COMMISSIONER
OF FINANCE
Petitioner.
vs.
CENTRAL VICTORIA, LTD.
Respondent.

No.----------

PETITIONER'S BRIEF
IN SUPPORT OF PETITION FOR
WRIT OF CERTIORARI.

STATEMENT.

On March 17th, 1921 respondent herein filed a verified petition praying for an injunction against the petitioner in the District Court of the Judicial District of San Juan, Porto Rico—Second Division, for the purpose of testing the legality of an ordinance enacted by the Municipal Assembly of the Municipality of Carolina, Porto Rico, imposing a tax of ten (10) cents upon the manufacture of every hundred pounds of sugar manufactured within the limits of the Municipality, alleging in the said petition that the said tax thus imposed was "illegal and null" (Record, p. 1). On the same date the District Court under a separate petition granted a preliminary injunction. (Record, p. 6).

On March 28th, 1921 petitioner herein, respondent below, filed his verified answer to the petition for a permanent injunction denying all the allegations of the petition except these alleging the enactment of the ordinance on February 17th, 1921; that under its terms petitioner is authorized, either in person or through employees of his department to

ascertain whether statements made by respondent as to the amount of sugar manufactured from time to time, is correct, and that petitioner proposed to collect the tax levied thereunder after July 1st, 1921. (Record, p. 9). By the allegations of the petition it appears that respondent is a corporation engaged in the manufacture of sugar within the Munimipality of Carolina, P. R. (Record, p. 3).

By stipulation of the parties (Record, p. 23) the petition for a permanent injunction was submitted on these pleadings to the District Court, no evidence being taken. This Court held that the tax was null and void and permanently enjoined its collection. (Record, p. 31). From this judgment petitioner appealed to the Supreme Court of Porto Rico, which reversed the judgment of the District Court, upholding the validity of the tax, (Record, p. 36) without dissent. Thereupon respondent appealed from this last decision to the United States Circuit Court of Appeals for the First Circuit, which, on February 5th, 1924, upon the authority of the opinion and jugdment in the case of Successors of C. & J. Fantauzzi, Petitioner, Appellant, vs. Municipal Assembly of Arroyo, Appellee, Defendant, No. 1617, reversed the judgment of the Supreme Court of Porto Rico, entering the following PER CURIAM opinion:

> "This case is governed by our opinion in No. 1617, Successors of C. & Fantauzzi vs. Municipal Assembly of Arroyo, Porto Rico." (R. p. 44).

The instant case and the one just named were decided together, the judgment in each being entered on the same date, and the instant case by reference to the Fantauzzi-Arroyo case. Petitions for a writ of certiorari are filed together in this Court to be addressed to the C. C. A. of the First Circuit to review the judgment of both cases.

By reference to the opinion in the other case (its record, p. 112) it will be seen that the judgment it rendered in that case, and therefore in this, was based upon the proposition contained in these words of the opinion:

> "Where, as in this case, a license has been imposed for carrying on the business of a sugar and molasses

mill, within the municipality, we think no additional tax can be imposed upon the business of manufacturing sugar, one of the necessary elements of the general business."

We say that, assuming arguendo, as correct the conclusion above quoted as to the other case, that in this, there is nothing in the record to justify its application to this case, and it is urged that the judgment in this case therefore stands without any foundation whatever. We must conclude that the Circuit Court of Appeals overlooked the fact that the records of the two cases are fundamentally different in this respect and that in this case the ground upon which it based its decision does not exist.

ERRORS ASSIGNED

(*a*) In holding that there had already been imposed a license upon respondent for the year of 1921 for conduction the business of a sugar mill for the year 1921, when the Municipal Assembly of Carolina levied the tax upon the manufacture of the sugar within the Municipality by the ordinance enacted February 17th. 1921, effective after July 1st. 1921.

(*b*) Assuming that a license tax had already been imposed upon respondent for the year of 1921 for conducting the business of a sugar mill, the Circuit Court of Appeals erred in holding that the tax upon the manufacture of sugar imposed by the ordinance of February 17th, 1921, effective after July 1st, 1921, was double taxation and therefore invalid."

(*c*) In holding that it was the intention of the Legislature of Porto Rico that any excise tax which should be levied by the Municipality should be one other than these enumerated in Act No. 26 of the Legislature of 1914 reenacted by the Legislature in 1920, (d) of section 49 of Act No. 9.

(*d*) In holding that the Municipality was not authorized to enact the ordinance of February 17th, 1921 by the Act

of Congress of 1917, known as the Organic Act for Porto Rico, or the Legislature of Porto Rico.

(*e*) In holding that the tax imposed under the ordinance of February 17th, 1921, imposing a tax upon the manufacture of sugar was a constituent element of a business already tax by a license tax, and therefore invalid and not effective.

(*f*) In reversing the judgment of the Supreme Court of Porto Rico which upheld the validity of the tax imposed by the ordinance of February 17th, 1921.

ARGUMENT.

The errors assigned in this case are the same as those assigned in the case of Municipal Assembly of Arroyo, Petitioner vs. Successors of C. & J. Fantauzzi, Respondent in which a petition for a writ of certiorari is filed at the same time to review the judgment of the same Court.

In the other case all the errors assigned are argued at length and those arguments apply to the errors assigned here, with the diference, as we contend, that the record in this case is fundamentally different from the record in the other case, resulting in the necessity of a different argument as to error (a) in this case from that which could be made as to error (a) in the other case on the sole ground upon which both cases were decided. We think that we might, then, for the sake of brevity, refer the Court, with its permision, as to all the errors herein assigned, except (a), to the arguments in support of the petition in the other case, and we shall serve opposing counsel, in this case with a copy of the petition and brief in the other case.

Error (*a*)—In holding that there had already been imposed a license tax upon the respondent herein for conducting the business of a sugar mill for the year 1921, when the Municipal Assembly of Carolina levied the tax upon the manufacture of sugar within the municipality by the ordinance enacted February 17th, 1921, effective after July 1st, 1921.

There is nowhere any evidence in this record which shows that the Municipality of Carolina or that the Insular Govern-

ment had imposed any license or excise tax upon the respondent, prior to that imposed by petitioner by virtue of its ordinance of February 17th, 1921. The contention of respondent has always been that the tax imposed is a property tax, and was a surtax on property assessable in the municipality in excess of one per cent allowed by law, was tantamount to an export tax, was oppressive, was levied without establishing a basic value of the property upon which it was levied, and imposed a double tax on property. (Record, pp. 3, 4). The verified answer denies these and all other allegations except that the ordinance was enacted; that under its terms the petitioner might ascertain the correctness of the statements of sugar factories as to the amount of sugar manufactured from time to time and that petitioner proposed to collect the tax levied by the ordinance. (Record, p. 9). The case was submitted on the pleadings, without evidence. (Record, p. 23).

The District Court did not decide whether the tax attacked was a property tax or an excise. Both the Supreme Court of Porto Rico and the C. C. A. held it to be an excise.

Stratton's Independence vs. Howbert, 231 U. S. 399, 415; Patton vs. Brady, 184 U. S. 608", Sugar Refining Co. vs. Mc Clain, 192 U. S., 397.

BOTH PORTO RICO COURTS RECOGNIZED THAT THERE WAS NO EVIDENCE OF PRIOR TAX IN THE CASE.

An examination of the record shows this. For the tax attacked to be double, as held by the C. C. A., a prior tax imposed upon the respondent, either by the Legislature or the petitioner would have to be shown. It could not be said that an occupation tax had been imposed by the Legislature unless it be contended that such was done by the terms of the Act No. 26 of the Legislature of 1914 reenacted by the Legislature in the New Municipal law of 1919 as amended by the Acts of the Legislature 1920, Act No. 9 (third special session). But it is clear from the terms of this act that no levy was made by it, but authority was granted to the municipalities to make such a levy under the maximum rates therein provided.

On this point the pertinent part of Act No. 26 of the Legislation is:

SECTION 1:

> "That the municipal councils of all the municipalities of the Island of Porto Rico, *are hereby authorized* to levy and collect, under the provisions of this act, on and from every person, firm x x x x engaged in any of the businesses or industries herein after mentioned, the taxes hereinafter enumerated, *at the rates hereinafter prescribed, or such uniform per centage of rates as the said municipal councils* may prescribe. x x x; Provided, *That if any municipality shall levy said taxes, at less than the full rates herein prescribed, for any business or industry subject to taxation* in accordance with this Act, *proportional reduction from said full rates shall be made* for all the business or industries within the said municipality." (Italics supplied).

SECTION, 2.—

> "That the businesses or industries upon which the taxes herein provided, *may be levied,* shall be the following:" (Italics supplied).

GROUP "C"

> "The business of sugar and molasses mills, brokers, commission merchants, agents with permanent offices, and real estate agents."

The C.C.A. concedes that no levy was made by the Legislature the terms of this act when it held in the case of Successors of C. & J. Fantauzzi vs. Municipal Assembly of Arroyo that the prior tax was levied by the Municipality in that case. It seems perfectly clear that in order that a levy be made under the authority of the Act of 1914 upon a business, an ordinance would have to be enacted by the municipality which might elect to avail itself of the benefits of that authority. Assuming that this be so; that it has always been contended by the petitioner that there is nothing in this record to show that the Municipality ever passed such an ordinance, was recognized by the District Court of San Juan and the Supreme Court of Porto Rico.

At page 27 of the record in the opinion of the District Court it is said:

> " x x x and supposing that the tax under consideration is an excise tax and the article taxed was not the object or matter of any other insular tax—a question which we cannot now decide if we adhere to the record of the case—"

It is obvious that when the District Court made use of the words "any other insular tax" it had reference to a tax imposed by the Municipality, for if reference had been made to a tax imposed by an act of the Legislature the act imposing it need not appear in the record, but would be available for its consideration as a law of the jurisdiction of which it could take judicial knowledge.

On this point the Supreme Court, at page 34 of the record, says:

> "Appellant (petitioner herein) also maintains that the power to impose a license tax was granted to the municipalities, but that there was no showing that the municipality in this case had exercised the power. Indeed appellant implies that it had not used the power. There is force in appellant's argument, but we prefer to base our decision on the more general lines of the Fantauzzi case."

As stated, the sole ground upon which the C. C. A. based its reversal of the judment of the Supreme Court of Porto Rico in the case of Fantauzzi vs. Municipal Assembly of Arroyo was that the municipality having imposed a business tex upon Successors of Fantauzzi could not impose a tax upon the manufacture of sugar as the latter was a constituent element of the business already taxed. By applying that holding to this case the reversal rests, of course, on that sole ground in this case, and our contention is that that ground is not to be found in this case, and that the judgment of reversal is without foundation.

NO EVIDENCE OF DOUBLE MUNICIPAL TAXATION IN THE RECORD.

We assume that the Act of 1914 did not constitute a levy upon respondent, but will be held to be an authority to the

municipalities to impose a tax, if they so elect, within the maximum rates stated in the Act mentioned. It is further assumed that there is no legal presumption that a levy has followed an authorization, whatever may be our experiences and observation.

But assuming, arguendo, that the Municipality prior to the date of the ordinance attacked imposed a license tax under the Act of the Legislature of 1914 upon respondent's business and that same was in force on the date of the ordinance attacked—Feb. 17th. 1921, and assuming further, as hold by the C. C. A. that the tax lovied by the ordinance of February 17th. 1921 was in conflict with the assumed prior license tax and that the last would have been double taxation.

But under such an assumed situation, it is to be observed that by Sec. 5 of the ordinance of February 17th, 1921, it is provided:

> "Any ordinance or resolution, or part thereof, in conflict herewith, is hereby repealed." (R. pp. 1, 2, 3).

Therefore any prior municipal taxing legislation stood repealed.

It must be further observed that according to the terms of the said ordinance it did not became effective until July 1st. 1921, over four months later.

Assuming, arguendo, also, that the repealing clause of the ordinance was not sufficient to repeal any prior municipal taxing legislation in conflict with the ordinance mentioned, it cannot be said that the Municipality did not by some other legislation, or would not before the date upon which the ordinance attacked became effective—July 1st, 1921—have repealed any leislation in conflict with the ordinance mentioned.

The presumption, we submit, is, that if there were a prior conflicting tax, that the Municipality did, or would have, before July 1st, 1921, enacted the necessary legislation to repeal it.

Singer Sewing Machine Co. v. Brickell, 233 U. S. 313; Presser v. Illinois, 116 U. S. 252; Parsons v. Bedford, 3 Pet. 433; Cincinnati, N. O. & T. P. R. Co. v. Kentucky, 115 U. S. 321 United States v. Coombs, 12 Pet. 72.

It is further to be noted that there is nothing in the record to show that after the ordinance attacked became effective on July 1st, 1921, that there was in existence any other tax upon the business of respondent or the manufacture of sugar or that petitioner expected or proposed to collect any tax of this character, except the one provided for in the said ordinance.

It is further to be noted that there is no allegation in the petition for the injunction filed by respondent, that any occupation or business tax had been imposed, except the one by the ordinance of February 17th, 1921, and that petitioner has consistently contended that the record shows no other tax which conflicts with the one under consideration, is shown by the reference to this contention by the District Court (Record, p. 27) and by the Supreme Court (Record, p. 31).

We therefore contend that the ground upon which the Circuit Court of Appeals based its reversal does not exist in the record of this case.

Aside from this assignment, the other errors assigned being fully argued in the Arroyo-Fantauzzi case which we understand to apply to both cases alike, the Court is respectfully referred to the brief in that case, if it be thought necessary to consider them in this case.

CONCLUSION.

WHEREFORE IT IS PRAYED that the judgment be reviewed and reversed, and that the judgment of the Supreme Court of Porto Rico be affirmed, and for such other and further relief to which the Court may deem Petitioner entitled.

(Signed) *E. B. WILCOX,*
JUAN B. SOTO.

IN THE SUPREME COURT OF THE UNITED STATES

(October Term, 1923).

JUAN PEREZ CAMI,
MUNICIPAL COMMISSIONER
OF FINANCE
Petitioner.
vs.
CENTRAL VICTORIA, LTD.
Respondent.

No.----------

To Cayetano Coll Cuchí, Esq.,
Attorney for Respondent.

Please take notice, that the annexed petition for a writ of certiorari to the United States Circuit Court of Appeals will be submitted to the Supreme Court of the United States at the opening of the Court on the 26th. day of May, 1924, or as soon thereafter as counsel may be heard.

San Juan, Porto Rico, April 23rd, 1924.

(Signed) *E. B. WILCOX,*
JUAN B. SOTO.
Attorneys for Petitioner.

Service of a copy of the within petition and brief, and of a copy of the petition and brief in the case of Municipal Assembly of Arroyo, Petitioner vs. Successors of C. & J. Fantauzzi, Respondent filed in the Supreme Court of the United States to be addressed to the United States Circuit Court of Appeals for the First Circuit, it hereby admitted this 23rd day of April, 1924, in San Juan, Porto Rico.

Cay. Coll Cuchí,
One of Attorneys for Respondent.

SUBJECT INDEX.

PETITION FOR WRIT OF CERTIORARI.

	Page.
Statement of the case and proceedings in the courts below	1
Grounds relied upon for issuance of the writ	3
Affidavit of petitioner and certificate of counsel	5, 6

BRIEF IN SUPPORT OF PETITION.

Statement	7
Statement of the ground of the reversal	8, 9
Assignment of errors	9
Error (a)	10
The ground for the reversal does not not exist in this case	10
Both Porto Rico courts recognized that there was no evidence of a prior tax in this case	11
No evidence of double taxation in this record	13
Any prior conflicting tax repealed by the repealing clause of the ordinance attacked	14
Presumption that Municipality taxed only what it rightfully could tax	14

INDEX OF CASES CITED.

Cincinnati, N. O. & T. P. R. Co. v Kentucky, 115 U. S. 321	14
Parsons v Bedford, 3 Pot. 433	14
Patton v Brady, 184 U. S. 606	11
Fressor v Illinois, 116 U. S. 252	14
Singer Sewing Mach. Co. v Brickell, 233 U. S. 313	14
Stracton's Independence v Howbert, 231 U. S. 399, 415	11
Sugar Refining Co. v McClain, 192 U. S. 397	11
United States v Coombs, 12 Pet. 72	14

INDEX

PAGE

Statement 1
Motion 1
Brief on merits 3
Submitting briefs already filed 6
The alleged prior tax not imposed by the Legislature 7
Answering Respondent's brief 8
Ground III of Respondent's brief 9
Objection that ordinance deprives Respondent of due process of law 12
Objection that tax is not uniform 13
Ground II of Respondent's argument 14
Ground I of Respondent's argument 16
License distinguished from tax 18
Conclusion 21

CASES

Calaf vs. Furgurla, 232 U. S. 371 22
Cami, Municipal Com. of Finance vs. Central Victoria, Ltd., 30 P. R. Rep. 413 22
Christian vs. King Co. 239 U. S. 356 19
Cincinnati N. O. & T. P. R. Co. vs. Kentucky, 115 U. S. 252.. 21
José Benitez et al. vs. Carlota y Clemencia Gonzalez Lugo, (Decided Feb. 19th. 1923, No. 236) 22
Knowlton vs. Moore 178 U. S. 41, 63 14
Nadal vs. May 233 U. S. 447 21
New York ex. rel. Clyde vs. Gilcrist 262 U. S. 97.....
New York ex. rel. Troy Union R. Co. Nealy 254 U. S. 47....
Oil City vs. Oil City Trust Co. 151 Pa. St. 454, 25 Atl. 124, 31 A. S. R. 770 18
Patton vs. Brady 184 U. S. 608..... 15
Parsons vs. Bedford, 3 Pet. 433..... 21
People vs. Garzot, 24 P. R. Rep. 390..... 22
Presser vs. Illinois 116 U. S. 252 21
Security Trust Co. vs. Lexington 203 N. S. 333 13
Schell vs. Fauch 126 S. W. 562 22

the ordinance (R. 1), and if the levy be legal, the amount accrued thereunder became due on July 1st., 1922.

In this case the Municipality has enacted no ordinance purporting to repeal its levy as was alleged to have been done by Arroyo, and made the basis of a motion to quash the writ (No. 369); nor is the question before the Court, (if in fact such a motion is before the Court) complicated by the Insular levy imposed upon the manufacture of sugar by section 14 of Act No. 68 of the Second Session of the Tenth Legislature of Porto Rico, approved July 28th., 1923, being in effect section 49 of Act No. 85 of the Municipal law of 1919, reenected by Act. No. 9 of the Third Special Session of the Ninth Legislature of 1920, that the Municipal revenues shall consist, among others, of

(*f*) "Any other impost, excise or tax that may be levied by a two thirds vote of the Municipal Assembly,*provided the object or matter of taxation is not also the object or matter of taxation of any Federal or Income Tax*", because the sum due under the tax had accrued before the Insular levy was made.

In our brief opposing the motion to quash the writ in No. 369, it was pointed out at greater length which we here repeat in substance, that even though a tax on the process of manufacturing sugar might have disappeared from the field of Municipal taxation by the subsequent imposition of an Insular tax, the question or principle before the Court for decision is not limited to the power of the Municipality to impose such a tax upon the manufacture of sugar, but is whether all municipalities in Porto Rico have the power to impose such a tax-for regulation to supervise them to protect the public health and safety, and for revenue upon *all* factories operating within the towns and cities in Porto Rico other than those engaged in the manufacture of sugar.

We respectfully refer to the brief mentioned at page 37 under the sub-heading of "the Scope of the Question" and grounds Nos. 3 and 4 stated at page 2, and the concluding remarks on page 39.

With great diffidence we refer to a brief or record filed in another case or elsewhere in the same case, as we now do and later herein refer to, but these two cases (Nos. 369 and 370) have at least twice been decided together, the last by reference to the first and the records as now filed so rely upon each other that it would be difficult of not impossible to discuss one without reference to the other, and our lack of a clear understanding as to just what is before the Court, and the brief time at our command, forces us to appeal to the generosity of an indulgent Court to consider the question in this rather complicated way.

BRIEF ON THE MERITS.

The errors assigned are as follows:

(*a*) In holding that there had already been imposed a license tax upon the respondent herein for conducting the business of a sugar mill for the year 1921, when the Municipal Assembly of Carolina levied the tax upon the manufacture of sugar within the Municipality by the ordinance enacted February 17th., 1921, effective July 1st. 1921.

(*b*) Assuming that a license tax had already been imposed upon the respondent for the year 1921 for conducting the business of a sugar mill, the Circuit of Appeals erred in holding that the tax upon the manufacture of sugar imposed by ordinance of February 17th., 1921 effective after July 1st., 1921, was double taxation and therefore invalid.

(c) In holding that it was the intention of the Legislature of Porto Rico that any excise tax

should be levied by the Municipality should be one other than those enumerated in Act 26 of the Legislature of 1914 reenacted by the Legisture in 1920 (d) of section 9 of Act No. 9.

(*d*) In holding that the Municipality was not authorized to enact the ordinance of February 17th. 1921, by the Act of Congress of 1917 known as the Organic Act for Porto Rico, or by the Legislature of Porto Rico.

(*e*) In holding that the tax imposed under the ordinance of February 17th., 1921, including a tax upon the manufacture of sugar was a constituent element of a business already taxed by a license tax, and was therefore not effective.

(*f*) In reversing the judgment of the Supreme Court of Porto Rico which upheld the validity of the tax imposed by the ordinance of February 17th. 1921.

Discussing (a). The Circuit Court of Appeals reversed the judgment of the Supreme Court of Porto Rico (R.30) by a per curiam opinion reading:

"This case is governed by our opinion in No. 1617, Successors of C. & J. Fantauzzi vs Municipal Assembly of Arroyo, P. R., and the entry should be: The judgment of the Supreme Court of Porto Rico is reversed with costs to the appellant in this court, and the case is remanded to that court for further action not inconsistent with this opinion."

How the instant case could be reversed upon the ground upon which it appears the other case was reversed, we have never been able to understand, because of the fundamental difference in the records of the two cases. It is submitted that the facts in this case did not exist upon which the decision of the C.C.A. rested in the Arroyo case.

Examining the opinion of the Court delivered in the Arroyo case (R.76 of 369) it will be found, as we understand it, that the decision rests upon the belief that in the instant case the Municipality of Carolina had enacted a license tax upon the business of molasses and sugar mills of that Municipality and that same was in force when the tax levied by the ordinance of February 17. 1921 became effective. The record nowhere discloses such a fact; it was never contended below, as shown by the record, that the Municipality had enacted such a tax.

There is some evidence in the Arroyo case that the Municipality had enacted such a prior tax (R. 18 of No. 369) where it appears that the Respondent in that case applied on March 1st. 1921 for a certificate for an Industrial and Commercial License, know in Porto Rico as the "Patente" tax, and we pause to point out that in the Arroyo case (R. 18 of No. 369) there is nothing in the record of that case to show that the license was ever granted. It was applied for under the Municipal ordinance then in force providing for it, but the date of the application autedated the enactment of the ordinance of March 9th. 1921 by nine days. The license applied for was never granted that the record shows, because the tax under the ordinance of March 9th. 1921 within a few days became operative by the terms of which all ordinances and resolutions in conflict therewith were repealed (R. No. 369, p. 14, Sec 8) and there is nothing in the record to show that the Municipality of Arroyo collected or ever tried to collect the tax in force prior to that levied by the ordinance of March 9th. 1921, after the enactment of the ordinance.

But be that as it may as to the Arroyo case, in the instant case it is submitted that there is nothing in the record that remotely justified the assumption that any prior tax upon the business of a sugar mill or upon the manufacturing of sugar had been imposed by this Municipality.

Referring to assignment (e) in connection with (a) which may be argued together, we quote from the

opinion of the Court (R. 76 of No. 369) upon which statement we understand the Court bases its judgment of reversal in both cases:

"If the Municipality had not in a prior assessment reached the maximum provided in the Act of 1914 and an emergency later arose which required the collection of a larger tax it might, under the authority of the cases cited in the opinion of the Supreme Court of Porto Rico, lay an additional tax, which would not, with that previously laid, exceed the maximum authorized by the Act of the Legislature", and on the same page:

"Where, as in this case, a license has been imposed for carrying on the business of a sugar and molasses mill within the Municipality, we think no additional tax can be imposed upon the business of manufacturing sugar, one of the necessary elements of the general business."

If there be no evidence in the record that any other tax than that imposed by the ordinance of February 17th. 1921 had been imposed by the Municipality or was at the time in force, what is quoted above from the Court's opinion could have no application in the instant case, and we understand that the above stated grounds are those upon which the Court's decisions rest in both cases.

Submitting Briefs Already Filed.

In the short space of time within which this brief must be prepared, printed and travel to reach Washington, it will not be possible to argue the general principles in support of the legality of the tax supporting the assignments of error others than (a) and (e) already discussed, and to attempt a worthy refutation of the arguments made in Respondent's brief on the merits, just filed. We argued the question at length in the brief in support of the petitions for the writ in both cases, in the case of Municipality of Arroyo, P. R., Petitioner vs Successors of C. & J. Fantauz-

zi, Respondent, No. 986 October Term-1923—No. 369 October Term-1924, and briefly in support of the petition for the instant case. We beg leave of the Court to submit these briefs in support of the merits of the two cases, and also to call attention to the opinion of the Supreme Court of Porto Rico (R. 24) and (R. 44, 59 of No. 369), the Arroyo case, in addition to which we briefly attempt to answer some of the arguments made against the legality of the taxes imposed by the Municipalities.

THE ALLEGED PRIOR LICENSE TAX NOT IMPOSED BY THE LEGISLATURE.

To make it appear that such a tax was in existence at the time the tax was levied by the Municipalities, and that the latter was therefore double taxation, it has been contended that the license tax was levied by the Legislature of Port Rico, by Act No. 26 approved March 26th. 1914 alleged to have been in force when the ordinances herein referred to were enacted. Admitting that it was in force, the terms italicised by us make it clear that the act was not a levy by the Legislature but an authority given to the Municipalities in Porto Rico to make such a levy if they desired.

The title and pertinent sections read as follows:

"An Act *authorizing* the Municipalities of the Island of Porto Rico *to levy* and collect annual taxes to be used in their budgetary expenses, and for other purposes."

Section One. That the Municipal Councils of all the Municipalities of the Island of Porto Rico are hereby *authoried to levy and collect* under the provisions of this Act, on and from every person, firm, etc.

Section Two. That the business or industries upon which the taxes herein provided *may be levied* shall be the following:

> Group C. The business of sugar and molasses mills.

That in the instant case no evidence appears of a prior tax conflicting with the one under attack, has always been insisted upon by counsel for the Municipality, and was urged upon the attention of the Supreme Court of Porto Rico, which in regard thereto said:

(R. 24) "Appellant (petitioner here) also maintains that the power to impose a license tax was granted to the municipalities, but that there was no showing that the municipality in this case had exercised the power. Indeed appellant implies that it had not used the power. There is force in appelant's argument, but we prefer to base our decision on the more general lines of the Fantauzzi case."

It is evident from the language of the opinion of the C.C.A. above quoted, that it did not regard the license tax as a levy made by the Legislature, and (R.75) the Court says:

> "We think that the license tax imposed in accordance with the Act of 1914 was not a Federal or Insular tax; but being imposed by the municipality and paid into its treasury, it was a municipal tax."

This conclusion seems unquestionably to be in accord with the law above quoted. In the Arroyo case such a tax had been enacted by that Municipality, while in the instant case it does not appear that any such license tax over had, and the ordinance of both Municipalities enacting the tax here in question contained clauses repealing any ordinance or resolution in conflict with the tax by them imposed, and in neither record is there the slighest evidence that either Municipality thereafter collected or attempted to collect any other tax of the same or similar character.

ANSWERING RESPONDENT'S BRIEF.

Since writing the above we have had a little time to read Respondent's brief dated April 17th. 1925, just

received. Respondent seems to admit that no prior license tax was in force in this case, as we contended above. If we have correctly understood the basis of the decision of the C. C. A.—double taxation—then it would seem that Respondent admits that the theory upon which the Circuit Court of Appeals decided that the ordinance in the instant case was illegal, was a mistaken one, and now Respondent seeks to attack the ordinance upon other grounds.

Asking the Court to consider the briefs filed in support of the petitions for the writs in both cases and especially the unanimous judgment and opinion of the Supreme Court of Porto Rico (R. 44 of 369) where the matter is fully discussed, we pass to a somewhat hurried attempt to refute the three (3) propositions stated in Respondent's brief, which we present in their inverse order.

> III.—"As a levy on property the tax is invalid, because the ordinance imposes a burden which is not uniform, and deprives of due process of law."

The tax was regarded by the Supreme Court of P. R. as an excise, but as a property tax it is not open to the objections stated by Respondent.

Under section 49 of the Municipal Law of 1919, Acts of the Second Session of the Legislature of Porto Rico, page 710, under the title *"The Municipal Revenues Shall Consist of"*: section two thereof provides:

> "That for and during the fiscal year beginning the first day of July, 1919, and ending the 30th. day of June, 1920, and for every succeeding fiscal year, unless other wise provided by the Legislature of Porto Rico, the rate of the regular general tax prescribed in an act approved March 12th. 1908,... to be collected by the Treasurer of Porto Rico on behalf of the municipalities shall be eighty hundredths of one percentum

> for municipalities of the first class and ninety hundredths of one percentum of the second and third class."

and in subsection (*c*) of the second section, additional source of municipal revenue on property is provided, as follows:

> "Any surcharge of the tax on taxable property of the municipality, provided it shall be decided by two thirds of the municipal assembly. Said surcharge shall not exceed (1) one per cent in municipalities of the first and second class, and one half-in municipalities of the third class, computing therein any additional tax at present or hereafter authorized.
>
> Said surcharge shall be devoted solely to... the development of elementary education,... school houses and for teachers..."

Therefore the municipalities had authority to levy a special tax as a surcharge upon property within the municipality within the rate limitations above mentioned. It has not been shown that if the tax in question was a property tax levied upon sugar that the rate limits were exceeded. This might have been alleged and proven before the trial court; but as no evidence was taken and Respondent submitted the case on the pleadings, Petitioner having filed an answer denying every material allegation of the complaint except the fact that the ordinance was enacted, (R. 1, 7, 15), Petitioner is entitled to every presumption existing in favor of the regularity and legality of legislative enactment.

It will be observed from the ordinance itself that the fund to be raised by the tax were to be used

> "for the erection of inexpensive school buildings and living quarter for teachers in the communities; for the acquisition of lands which form such communities, the organization thereof and farm schools."

which are among the purposes for which funds were to be used, raised by special taxes by a surcharge on property. (Subsection (*c*) above.

It will be seen from this subsection that such a surtax was to be levied by the municipalities when believed to be needed by a twothirds vote of the members of the assembly, and there is no question that the ordinance did not receive the requisite vote.

The situation then was that the Legislature levied a property tax for the municipalities of eighty hundredths of one per cent for municipalities of the first class or ninety hundredths of one per cent for those of the second and third classes, to be collected by the Treasurer of Porto Rico (Section 2) supra; that in addition thereto the municipalities might levy a surcharge upon property provided it be done a two thirds vote of the members of the assembly subject to the rate limitation already mentioned, which is nowhere shown to have been exceeded.

It might be objected that the authority given by the Legislature to levy a surcharge upon property is at variance with (*f*) of section 49 the same law, reading:

> "Any other impost, excise or tax that may be levied by twothirds of the members of the Municipal Assembly, provided the object or matter of taxation is not also the object or matter of any federal or insular tax."

It is not easy to believe that the Legislature did not have in mind when it wrote (*f*), subsection (*c*) authorizing the surcharge upon property of section 2, when these are subsections of section 49 of the same law. It is clear that the qualification attached to the kind of taxes mentioned therein, "provided the object or matter of taxation is not also the object or matter of any federal or insular tax" was not intended to apply to the surcharge upon property, and besides the property tax imposed under section 2, supra, was not an insular tax, though imposed by the Legislature, but one im-

posed by it for the municipalities, as the Legislature might do under section 3 of the Organic Act of 1917.

Property therefore may be taxed by both the Insular and Municipal Governments within fixed rates, and Section 65 of the Municipal Law of 1919 provides for ready redress in the courts, as we shall later point out.

Objection that the Tax Deprives Respondent of Due Process of Law.

On pages 24 and 25 of Respondent's brief objection is made to the manner of collecting the tax; that no notice is given; that Municipal officers may investigate the accuracy of the reports to be rendered by Respondent; that no opportunity is provided for protest or objection or for recision of the acts of the officers of Petitioner; that no "grievance day" is provided.

Section 65 of the Municipal Law of 1919, Acts of the Second Session of the Ninth Legislature, page 720 reads as follows:

> "That on motion of the aggrieved party the courts of justice shall have jurisdiction,
>
> (*a*) To annul or review by writ of certiorari any legislative or administrative act of the assembly, council of administrative or commissioners, which infringes the constitutional rights of complainant or which is contrary to the Organic Act or the laws of Porto Rico;
>
> (*b*) To stay by injunction the execution of any ordinance, act, resolution or order which infringes rights guaranteed by the Constitution or insular laws;
>
> (*c*) To compel by writ of mandamus a compliance with ministeral duties by municipal officials;
>
> (*d*) To grant, by ordinary suit, compensation for damages, to parties injured by acts or omissions

of municipal officials through malice or inexcusable negligence or ignorance."

Fuller protection could not very well be afforded, and the above provisions meet the test laid down by the Supreme Court of the United States in Security Trust Co. vs. Lexington, 203 U. S. 323, at page 333, where it is said:

> "It is sufficient if the tax payers are given the right to appeal to the courts of law, and there to be heard and offer evidence as to the validity of the tax and the value of the property as finally fixed; or if as a matter of right they may sue to have the collection of the tax enjoined, with full opportunity to be heard, on the question of validity and the amount of the tax."

It will be observed that from the above section there exists a complete remedy by review, of the legislative or administrative acts of the assembly, council of administration or commissioners.

Objection That Tax is not Uniform.

The organic Act of 1917 provides in section two:

> "That the rule of taxation in Porto Rico shall be uniform."

This is to be the *rule*, but it could not mean, as a practical matter, that all taxes in the 65 municipalities shall be equal.

Such meaning strictly enforced, would leave no latitude to adjust tax collection to meet the varying requirements of the several municipalities. Were an inflexible rate fixed, and provision made, by the Legislature for the municipalities, and the needs of the municipalities varied, as they must of necessity do, in some there would be a surplus of income while in others a deficit; neither would there be left any oppor-

tunity or need for the exercise of discretion on the part of municipal officials. If a municipality needed a schoolhouse and a tax were required to be levied to build it, it would be helpless to do so and the school children would have to wait until their Municipality had persuaded every other municipality in Porto Rico to levy the same tax, or until the Legislature could be persuaded to levy the same tax for all the municipalities, some of which might not need such a building at all, and might at the time have a surplus of funds in their treasury.

To contend that Congress expected such a strict application of the rule of uniformity throughout all Porto Rico, regardless of individual municipal requirements, would be as impracticable as if Congress had adopted the cut and measurements for a suit of clothes to be worn by all male adults in Porto Rico, without reference to the difference existing in the size and proportions of different individuals composing that class. The rule is satisfied if it be uniform thoughout the jurisdiction of the legislative body enacting the tax, in which the purpose is for it to operate. Knowlton vs. Moore 178 U. S. 41, 83 to seq. and authorities therein cited; 26 R. C. L. 247; 37 Cyc. 733 et seq. We cannot conceive that Congress ever intended to take taxation out of the principles laid down by the authorities just cited, when any other plan would be so impossible of practical application.

> II.—"The clauses of the Municipal Law upon which alone the ordinance is based fail to comply with the requirement of the Organic Act that taxes for municipal purposes be provided and defined by the Legislature."

This objection was before the Supreme Court of Porto Rico, to meet which the Court so aptly replies that we quote that part of the opinion. (R. 49 of 369).

> "Sec. 3 of the Organic Act, supra, does not say, as suggested, that each and every tax to the im-

> posed must be expressly and specifically defined. If I say to a man that I want to reserve to myself certain rooms in my house but that he is free to occupy and possess any other part of that house, it is a complete definition and provision of the part of the house he is to occupy. There is no way known to us in logic or legislation that is more exhaustive of the field to be covered than a similar residuary provision, and this to a certain extent was the method of the Organic Act with regard to taxation inasmuch as in section 3 a prohibition was first placed on our Legislature by Congress and the rest of the field left open. There is no mistaking the territory covered. By section 49 (*f*) the municipality is to impose any tax previously imposed by the national or insular governments, but is free to impose any other tax. Whether this is a wise provision of the legislature is not a subject of judicial inquiry, provided the right to delegate the power of taxation to municipalities exists. Pattons vs. Brady, 184 U. S. 608; State vs. Irvin, 25 S. E. 430; State vs. Worth, 21 S. E. 204."

It would seem that the form and manner of provision and definition are unimportant, it being necessary only that the Legislature inform the municipalities in some understandable manner what tax they may or may not impose. To require the Legislature to express affimatively in a schedule the character of tax and object of taxation would have been impracticable if not impossible, for objects of taxation would and do differ in differ localities; they exist in some and do not exist in others, and certain latitude by general statement would have to be permitted to meet differing situations and to cover objects that the wisest and most painstaking legislators could not possible have forseen.

The C. C. A. found no objection to this form of provision and definition, and we think correctly stated the situation, in that part of its opinion (R. 75 of 369) where it said:

> "The fair inference from the inclusion of the power granted under subsection (*f*) is that it was inserted because the Legislature felt that, although it had made a very detailed and comprensive enumeration of the Act of 1914 of the businesses and industries which might be subject to a license tax by the municipality, yet by inadvertaince it might have made an omission of some which should pay such a tax, and that power should be granted to the municipality to levy such a tax by a two-thirds vote of the members of its assembly upon any business or occupation not enumerated."

I.—*"The legislature did not authorize the municipality to levy the tax."*

Respondent having admitted that the Municipality had never enacted a license tax authorized by the Legislature under Act No. 26 of 1914, and consequently there was no double taxation as held by the C. C. A., as we understand it, now urges that the enactment of such a prior tax is unimportant in a consideration of the validity of the ordinance under attack, because of the language of subsection (*f*) of section 49 of the Municipal law of 1919 reading:

> "Any other import, excise or tax that may be levied by two-thirds of the members of the Municipal assembly, provided the object or matter of taxation is not the object or matter of taxation of any federal or insular tax."

under which Respondent assumes the ordinance in question was enacted. It is urged that the word "other" excludes authority to enact such a tax upon the process of manufacturing sugar, because by Act No. 26 authority was granted to impose a license upon the business of a sugar and molasses mill; that the two—business and manufacturing—are the same and that "other" in the connection employed confines a

municipality to the levy of a tax imposed under (*f*) to one not appearing in the schedule just preceding subsection (*f*).

While the argument is ingenious it appears to overlook the fact that the tax in question may find authority as one levied as a surcharge upon property under (*c*) of section two, supra, and also overlooks the well marked distinction, and therefore difference, between a licence imposed for regulation under the Police power, and an excise levied for revenue, or for regulation and revenue. That the tax levied or that might be levied, under Act 26 of 1914, was a license seems clear. The application for a certificate had to be made quarterly in advance the obtaining of which was a condition procedent to being allowed to do business, and if not obtained, doing business without it by section 12 was made a misdemeanor. An examination of what could be collected under its provisions when the maximum amount was required produced a sum so insignificant as to make it clear that it was intended to cover only the Municipality's expense of supervision. The maximum amount that could be collected being only 25 cents on each Thousand Dollars of the volume of business transacted up to One Million Dollars and beyond that sum twelve and one half cents per $1000.00, and by the law it is called a license.

The difference between a license for regulation imposed under the Police power and an excise tax, is shown by 19 R. C. L. p. 947, par. 246 where an excise in its modern sense it defined.

> "The word has come to have a broader meaning and to include every pecuniary imposition created under the power of taxation which is not a burden laid upon persons or property, or in other words every charge imposed by public authority for the purpose of raising revenue upon the performance of an act, the enjoyment of a privalege or the engaging in an occupation."

The distinction is at length explained by par. 251, 19 R. C. L. p. 950.

17 R. C. L. p. 478, par. 7 is entitled:
License Distinguished from Tax. at p. 479 it is said:

> "Where the fee is imposed for the purpose of regulation and the statute requires compliance with certain conditions in addition to the payment of a prescribed sum, such sum is a licence proper, imposed by virtue of the police power."

At p. 480 it is said:

> "A license fee is in its nature an imposition on the right to use or dispose of property, to conduct a business, or to exercise a privalege... A tax does not imply a license. There is no necessary connection between the two. A business may be taxed and yet not licensed... A license is a tax only when revenue is the main purpose for which it is imposed.

In par. 252 of 19 R. C. p. 951 it is said:

> "Where a municipal regulation is adopted, which would be lawful if intended for one purpose and unlawful for another, the presumption is that the purpose was lawful unless the contrary clearly appears."

Citing Van Hook vs. Salom 70 Ala. 361, Am. Rep. 85; Schmidt vs. Indianapolis, 168 Ind. 631, 787; Oil City vs. Oil City Trust Co. 151 Pa. St. 80 N. E. 632, 120 A. S. R. 385, 14 L. R. A. (N. S.) St. 454, 25 Atl. 124, 31, 31 A. S. R. 770.

Referring to the opinion of a Judge of the local United States Court delivered on April 23rd. 1921, attached to Respondent's brief as appendix "E", page 36 of the brief and section 3 of the opinion we find it said:

> "The old classification of taxation into property, license, and excise tax would still seem to be controlling."

From the foregoing, assuming that the ordinance was enacted under (*f*) supra, it would seem clear that as an excise, it is a *different* tax from the license referred to, and falls within the provision (*f*) "Any *other* import, excise or tax..."

There is one other consideration to be noticed in connection with Respondent's argument which we have just endeavered to meet, and on page 17 of the brief where it is said that:

> "The disobedience by the legislature of the limitation imposed renders invalid the clauses of the Municipal Law under discussion"

referring to subdivision 4 of section 26 and subdivision (*f*) of section 49 of the Municipal law of 1919.

We think, as did the Supreme Court of Porto Rico, that the taxing power of a municipality in Porto Rico, once that its organization is perfected, as authorized by section 37 of the Organic Act of 1917, is not dependent solely upon a delegation of power from the Legislature, but possesses its taxing power for the same reasons that a municipality in any state or territory posesses them. (R. 50 of 369) citing Christian vs. King Country, 239 U. S. 356, to be considered with section 37 of the Organic Act of 1917.

Another consideration is the insistence in Respondent's brief that the powers granted by the Legislature to municipalities under subsection 4 of Act No. 26 of 1914 and (*f*) of section 49 of the Laws of 1919, are too broad and that Congress expected a closer supervision by the Legislature over the taxing power of the municipalities—in other words a highly centralized government by the Legislature to the prejudice of local self government.

This shows unfamiliarty with the history of our legislation. Prior to the enactment of the present Organic Act, and under the Foraker Act of 1900—there was in Porto Rico no elective senate and all the heads of the Departments were appointed by the President. The old Municipal law was correspondingly restrictive of local self-government. As a consequence of that situation severe criticism became general and persistent of the old Organic Act and the restrictions upon the municipalities, resulting in such a state of unrest as to find expression in an almost popular demand for independence. To meet this situation and to remove any just cause of complaint Congress enacted the present Organic Act which carried liberal provisions for local self-government which the Legislature consistently enacted into law by the enactment of the new Municipal law of 1919.

The construction of the Municipal and other legislation asked for by Respondent to evade the payment of its tax, calls for a construction of Municipal power of self-government which would result in a reversion to the situation as it stood before the Organic Act of 1917 and the new Municipal law of 1919 were enacted. The present legislation cannot be properly understood without a knowledge of the history of the legislation—Holy Trinity Church case, and that line of cases.

Instead of highly centralized Legislative supervision of taxation, in consonance with the new grant of a more liberal form of government received from Congress under the Organic Act of 1917, and following the forms and spirit of government in the United States, the Legislature, believing in the capacity of the people to fairly and wisely manage their local affairs, chose to give a liberal form of government to the municipalities, at the same time affording ample protection to property and industry by easy recourse to the courts, as is done by the liberal provisions of section 65 of the Municipal Law herein quoted. In this Court may take judicial knowledge of Porto Rican legislation it knows that the control of the courts

here is highly centralized. Except for the Justices of the Supreme Court all judges are appointed by the Governor, who is appointed by and holds office at the will of the President who also appoints the Justices of the Supreme Court. Appeals in all subordinate courts reach the Supreme Court. Any legislation enacted by the Legislature may be revised by Congress. We think that property and industry are amply protected without any such forced construction of the Municipal law as contended for by Respondent. The wisdom of Legislative policy is is not for the Courts, and when changes are thought to be needed application should be made to the Legislative branch of the government.

Conclusion.

In conclusion it is urged that the presumptions are in favor of the constitutionality and legality of the tax.

Singer Sewing Machine Co. vs. Brickell, 233 U. S. 313; Presser vs. Illinois, 116 U. S. 252; Parsons vs. Bedford, 3 Pet. 433; Cincinnati N. O. & T. P. R. Co. vs. Kentucky, 115 U. S. 321; United States vs. Coombs, 12 Pet. 72.

That taxation laws and decisions constitute a policy of local concern. At page 8 of Respondent's brief it is stated that the question rests upon the construction of a local statute. The C. C. A. stated that it thought the Legislature meant some thing different from what the Supreme Court of P. R. though it meant.

Being a territory we cannot invoke the principle that the construction of a local statute by the Court of last resort of the jurisdiction, constitutes a rule of local law binding upon federal appellant courts but on several occasions this Court has said that the decisions of the Supreme Court of Porto Rico were entitled to deference as to questions arising out of a system of jurisprudence proceeding from a foreign source. Nadal vs. May 233 U. S. 447 José Benitez Diaz et al. Carlota y Clemen-

tina Gonzalez Lugo (decided Feb. 19th. 1923, No. 236; Calaf vs. Furgural et al, 232 U. S. 371, and others.

Local tax laws and decisions which have developed into a fixed local taxing policy cannot be disturbed without causing great loss and confusion.

The principles involved in the question now before the Court have been decided by the Supreme Court of Porto Rico in at least three decisions: People vs. Garzot, 24 P. R. Rep. 215; Successors of C. & J. Fantauzzi vs. Municipal Assembly of Arroyo 30 P. R. Rep. 390; Cami, Municipal Commissioner of Finance vs. Central Victoria Ltd. 30 P. R. Rep. 413.

In New York ex. rel. Glyde vs. Gilcrist 262 U. S. at pago 97 the Court said:

"When we are dealing with a matter of local policy, like a system of taxation, we shall be slow to depart from their (local courts) judgment if there was no oppression or manifest wrong in the result."

Citing New York ex. rel. Troy Union R. Co. vs. Mealy 264 U. S., Schell vs. Fauche, 126 S. W. 562.

We pray that if any motion has been filed to quash the writ that it be denied, and that on the merits the judgment of the United States Circuit Court of Appeals for the First Circuit be reversed, with costs.

Respectfully submitted,

(Signed) *E. B. Wilcox,*
Juan B. Soto,
Counsel for Petitioner.

Received Copy. May, 6, 1925.

Cay. Coll y Cuchi,
Of Counsel for Respondent.

MAY 19 192
WM. R. STANS
OL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

No. [redacted]370

JUAN PEREZ CAMI, MUNICIPAL COMMISSIONER OF FINANCE,

Petitioner.

—vs.—

CENTRAL VICTORIA, LTD.,

Respondent.

BRIEF FOR RESPONDENT.

FRANCIS G. CAFFEY,
Counsel for Respondent.

The Alpert Press, 116 Livingston St., Brooklyn, N. Y. Tel. Main 1058-1059

IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

JUAN PEREZ CAMI, MUNICIPAL COMMISSIONER OF FINANCE, Petitioner, —vs.— CENTRAL VICTORIA, LTD., Respondent.	No. 987.

BRIEF FOR RESPONDENT.

The decision of the Court of Appeals is based on lack of power in the municipality represented by petitioner to levy the tax sought to be enjoined. It does not involve a question warranting review by this Court. Moreover, it is plainly right.

I.

The description in the petition (p. 4) of the significance of the revenues affected is exaggerated. If, however, all there said were accurate, only an ordinary matter of statutory interpretation arises. That is neither grave in character nor of great public interest in the sense of the instances in which this Court allows certiorari.

See *In re Woods*, 143 U. S. 202, 206;
U. S. vs. Rimer, 220 U. S. 547;
Magnum Co. vs. Coty, 262 U. S. 159, 163.

II.

Concededly if the tax were construed to be on property (*Dawson vs. Kentucky Distilleries Co.*, 255 U. S. 288, 294), it would be invalid. Only if treated as an excise (*Patton vs. Brady*, 184 U. S. 608, 615-9), as petitioner contends it is, can there be even room for argument.

The levy is ten cents "on every hundredweight of sugar manufactured." Whether this was lawful depends solely upon the meaning of section 49 of the Municipal Law of Porto Rico (Appendix A).

Subdivision 4 of section 26 of the Municipal Law distributes to the municipal assembly power to levy taxes and excises. Section 49 defines the field to which the exercise of that power is confined. The solution of the problem therefore depends merely upon section 49.

Act No. 26 of 1914 (Appendix B) empowers a municipality to exact taxes from any person or corporation "engaged in" the business of a sugar mill. In the Municipal Law these are referred to as "license taxes." They are not so denominated in the act of 1914 itself. As will be seen later, the burden is actually laid on the total amount of business annually.

Section 49 of the Municipal Law schedules everything of which municipal revenues "shall consist." Subdivision (d) recites the taxes authorized by the act of 1914; subdivision (f), "any other impost, excise or tax."

Obviously the tax here is not embraced in subdivision (f) if it be of the kind provided for by the act of 1914. It could not be "other," within that term as employed in subdivision (f), if already included in subdivision (d).

An excise on all sugar manufactured is identical in substance and effect with a tax on the business of manufacturing sugar. Conducting the business

of manufacturing sugar is the same as engaging in the business of a sugar mill. Regarded as an excise, a tax on sugar manufactured is a tax on the process of manufacturing sugar. So also taxing the business of a sugar mill is taxing the process of manufacturing sugar—which is a constituent element of carrying on the business of a sugar mill. Accordingly, the tax imposed by the ordinance is precisely that—or is at least embraced within that—which the act of 1914 authorized.

The ordinance, however, does not conform to the limitations prescribed by the act of 1914. The statute makes "the volume of business transacted during the calendar year" the basis. It also fixes maximum rates varying with the volume. The ordinance exacts a uniform charge per hundredweight regardless of the size or money value of the business done.

In consequence, the tax in controversy cannot be sustained under either subdivision (d) or subdivision (f).

As the issue is whether the municipality had authority to levy the tax imposed by the ordinance, it is immaterial whether some other course—even though it would have been proper under the act of 1914—has or has not been followed. Failure to avail of opportunity to levy a tax under subdivision (d) cannot make subdivision (f) applicable to something to which it would not otherwise extend.

III.

It is respectfully submitted that the writ should be denied.

Dated, New York, May 16, 1924.

FRANCIS G. CAFFEY,
Counsel for Respondent.

APPENDIX A.

Section 49 of Municipal Law.

(Laws of Porto Rico of 1919, pp. 708, 712; as amended by Laws of 1920, pp. 70, 72).

"That the municipal revenues shall consist of— * * *

"(d) License taxes provided by Act No. 26 of March 28, 1914, * * * which is hereby declared to be in force; * * *

"(f) Any other impost, excise or tax that may be levied by two-thirds of the members of the municipal assembly, * * *".

APPENDIX B.

Act No. 26 of 1914.

(Laws of Porto Rico of 1914, pp. 174-7).

"Sec. 1.—That the municipal councils of all the municipalities of the Island of Porto Rico are hereby authorized to levy and collect, under the provisions of this Act, on and from every person, firm, association, partnership, corporation or other form whatsoever of commercial or industrial organization engaged in any of the businesses or industries hereinafter mentioned, the taxes hereinafter enumerated, * * *

"Sec. 2.—That the businesses or industries upon which the taxes herein provided may be levied, shall be the following: * * *

"Group C.—The businesses of sugar and molasses mills, * * *

"Sec. 3.—That all persons, firms, associations, partnerships, corporations or other form whatsoever of commercial or industrial organizations engaged in any of the businesses or industries specified in the preceding section shall pay to the treasurers of the municipalities in which said businesses or industries are situated, the tax levied by the municipal council, in accordance with this Act; said tax shall be paid, * * * on the basis of the volume of business transacted during the calendar year and immediately preceding, * * * and at the following rates; * * *

"Those of Group C:

For each $1,000 or fraction thereof in excess of the first $500 of volume of business transacted, up to $1,000,000 inclusive	$0.25 a year
For each $1,000 or fraction thereof in excess of the first $1,000,000 of volume of business transacted.....	$0.125 a year."

APR 20 1925
WM. R. STANSBURY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1924

No. 370

JUAN PEREZ CAMI, MUNICIPAL COMMISSIONER OF FINANCE, PETITIONER,

—vs.—

CENTRAL VICTORIA, LTD.

BRIEF FOR RESPONDENT.

Cay Coll y Cuchi,
George W. Study,
Bouvier, Caffey & Beale,
Attorneys for Respondent.

Francis G. Caffey,
Counsel.

The Alpert Press, 138 Livingston St., Brooklyn, N. Y. Tel. Main 1058-1059

INDEX.

PAGE

Statement 1
Assignments of Error..... 2
Ordinance 3
Propositions 5
Argument 5

I. The legislature of Porto Rico did not authorize the municipality to levy the tax..... 5

II. The clauses in the Municipal Law upon which alone the ordinance is based fail to comply with the requirement in the Organic Act that taxes for municipal purposes be provided and defined by the legislature 13

III. As a levy on property the tax is invalid, because the ordinance imposes a burden which is not uniform and deprives of due process of law 20

IV. The judgment of the Court of Appeals should be affirmed, with costs..... 28

Cases

Abbottsford, 98 U. S. 440..... 20
Attorney Gen. vs. Winnebago Lake, etc., Co., 11 Wis. 35 20
Baker vs. Cincinnati 11 Ohio St. 534..... 24
Balzac vs. Porto Rico, 258 U. S. 298 .....5, 18
Beebe vs. Wells, 37 Kans. 472..... 24
Bell vs. Watson & Bro., 3 Lea (Tenn.) 328..... 10
Benedicto vs. P. R. Tob. Co., 256 Fed. 422..... 5
Binns vs. U. S., 194 U. S. 486..... 17
Boyd, etc. Co. vs. Ward, 85 Fed. 27.....15, 16, 17, 19
Canova vs. Williams, 41 Fla. 509..... 10

PAGE

Carney vs. Hamilton, 89 Miss. 747..... 10
Central of Georgia R. Co. vs. Wright, 207 U. S. 127.... 25
Chicago & N. W. R. Co. vs. State, 128 Wis. 553.....22, 24
Christianson vs. King Co., 239 U. S. 356..... 18
Cincinnati, etc., Co. vs. State, 18 Ohio St. 237..... 24
Coe vs. Armour Fertilizer Works, 237 U. S. 413..... 25
Commonwealth vs. Fowler, 96 Ky. 166..... 10
Commonwealth vs. Pearl Laundry Co., 105 Ky. 259.... 10
Cummings vs. National Bank, 101 U. S. 153..... 22
Dawson vs. Kentucky Distilleries Co., 255 U. S. 288 25
Downes vs. Bidwell, 182 U. S. 244..... 17
Ellis vs. Frazier, 38 Oregon 462 26
Exchange Bk. of Columbus vs. Hines, 3 Ohio St. 1.... 20
Flint vs. Stone Tracy Co., 220 U. S. 107..... 25
Gilman vs. City of Sheboygan, 2 Black 510..... 22
Greene vs. Louisville & Int. R. Co., 244 U. S. 499..... 22
Hetrick vs. Village of Lindsey, 265 U. S. 384..... 25
Hewin vs. Atlanta, 121 Ga., 723..... 10
Hotelling vs. Chicago, 66 Ill. 289..... 10
Hylton vs. U. S., 3 Dallas 171..... 25
Kepner vs. U. S., 195 U. S. 100..... 20
Kingsley vs. Merrill, 122 Wis. 185..... 22
Knowlton vs. Moore, 178 U. S. 41..... 23
Knowlton vs. Supervisors of Rock Co., 9 Wis. 410....20, 21
Lawder vs. Stone, 187 U. S. 281..... 20
Logan vs. U. S., 144 U. S. 263..... 20
Londoner vs. Denver, 210 U. S. 373..... 25
McDonald vs. Hovey, 110 U. S. 619..... 20
Milwaukee & Miss. R. Co. vs. Board of Supervisors, 9 Wis. 431 21
Milwaukee Co. vs. Halsey, 149 Wis. 82..... 22
Mormon Church vs. U. S., 136 U. S. 1..... 17
Newport vs. Fitzer, 131 Ky. 544..... 10
Norfolk South R. R. Co. vs. Chatman, 244 U. S. 276 20
Nunnemacher vs. State, 129 Wis. 228.....23, 24
Oklahoma vs. Atchison, etc., Ry., 220 U. S. 277..... 18

PAGE

Oliver Iron Co. vs. Lord, 262 U. S. 172..... 26
Parsons vs. Dist. of Col., 170 U. S. 45..... 17
Patton vs. Brady, 184 U. S. 608..... 27
People vs. Naglee, 1 Cal. 232..... 23
Pollock vs. Farmers' Loan & Tr. Co., 157 U. S. 429; 158 U. S. 601 27
Pullman P. C. Co. vs. State, 64 Tex. 274..... 24
Railroad vs. Reidsville, 101 N. C. 404..... 24
Railway Co. vs. State, 49 Ohio St. 189..... 26
Regal Drug Corp. vs. Wardell, 260 U. S. 386..... 25
Rhinehart vs. State, 121 Tenn. 420..... 24
Security Trust Co. vs. Lexington, 203 U. S. 323..... 25
Sims, Ex Parte, 40 Fla. 432..... 10
Simms vs. Simms, 175 U. S. 162..... 17
Societe Anonyome des Sucreries vs. Caldas.....2, 15, 19, 34
Standard Oil Co. vs. U. S., 221 U. S. 1..... 20
State vs. Applegarth, 81 Md. 293..... 24
State vs. Bengsch, 170 Mo. 81..... 26
State vs. Cumb. & Penn. R. R., 40 Md. 22 26
State vs. Jones, 51 Ohio St. 492..... 20
State vs. Philadelphia, etc., R. Co., 45 Md. 361..... 24
State vs. Railroad Corporations, 4 S. C. 376..... 26
State ex rel Reedsburg Bank vs. Hastings, 12 Wis. 47 20
State vs. Richards, 52 N. J. L. 156..... 24
State ex rel. Sanderson vs. Mann, 76 Wis. 469..... 22
State ex rel. Stern vs. Bodden, 165 Wis. 75..... 22
State vs. Whitcom, 122 Wis. 110..... 22
St. Louis vs. Spiegel, 75 Mo. 145..... 23
St. Louis vs. United Railways Co., 210 U. S. 266..... 23
Successors of Fantauzzi vs. Munic. Assemb. of Arroyo, 30 P. R. 390; 295 Fed. 803; 265 U. S. 577..... 1, 2
Thompson vs. Kreutzer, 112 Miss. 165..... 26
Thompson vs. McLeod, 112 Miss. 383..... 26
Township of Pine Grove vs. Talcott, 19 Wall. 666.... 22
Turner vs. Wade, 254 U. S. 64..... 25

PAGE

Tuscaloosa vs. Hollczstein, 134 Ala. 636..... 10
U. S. vs. Merriam, 263 U. S. 179..... 20
U. S. vs. Mooney, 116 U. S. 104..... 20
U. S. ex rel. Ranger vs. New Orleans, 98 U. S. 381..... 17
Veazie Bank vs. Fenno, 8 Wall. 533..... 27
Vosse vs. Memphis, 77 Tenn. 294..... 10
Walker vs. New Orleans, 31 La. Ann. 828..... 10
Ward vs. Maryland, 12 Wall. 418..... 23
Wasson vs. Commissioners, 49 Ohio St. 622..... 20
Watson, In re, 15 Fed. 516..... 24
Weeks vs. Milwaukee, 10 Wis. 242..... 20
Williams vs. Garignes, 30 La. Ann. 1094..... 10
Wisconsin Cent. R. Co. vs. Taylor Co., 52 Wis. 37.... 22

Statutes

Kentucky, Acts of 1920, p. 27 25
Missouri, Laws of 1893, p. 101 16

Porto Rico:
Act of March 12, 1908..... 29
Act of March 9, 1911 25
Act No. 26 of March 28, 1914 30
Act of April 13, 1916..... 30
Laws of 1906, p. 129..... 8
1910, p. 113..... 8
1913, p. 154..... 8
1914, p. 96..... 8
Municipal Law 32
Political Code 29
Revised Statutes and Codes..... 8

United States:
Foraker Act of 1900 26
Organic (Jones) Act of 1917.....26, 29

Supreme Court of the United States

OCTOBER TERM, 1924

No. 370

JUAN PEREZ CAMI, Municipal Commissioner of Finance, Petitioner,

—vs.—

CENTRAL VICTORIA, LTD.

BRIEF FOR RESPONDENT.

This case is here on certiorari to the Court of Appeals for the First Circuit (265 U. S. 577). It involves a municipal ordinance. The District Court of Porto Rico held it invalid (R. 16-22); the Supreme Court of Porto Rico, valid (R. 24-6; 30 P. R. Rep. 413); the Court of Appeals, invalid (R. 30-1; 295 Fed. 809).

Statement.

On February 17, 1921, the Municipal Assembly of Carolina enacted an ordinance levying a tax of 10¢ on each hundredweight of sugar manufactured within its borders (R. 1-2). Respondent is a manufacturer of sugar in that municipality. Petitioner intended to collect the tax. Respondent filed its bill to enjoin him from doing so (R. 1-3). Petitioner answered admitting the material allegations (R. 7-8). The cause was submitted on the pleadings (R. 15-6). An injunction was granted (R. 21-2).

Two other municipalities adopted similar measures. That for Arroyo was passed on in *Successors of C. & J. Fantauzzi vs. Municipal Assembly of Arroyo,* 30 P. R. Rep.

390; 295 Fed. 803,—now pending in this Court on certiorari (265 U. S. 577). That for Caguas was before the United States District Court of Porto Rico in *Societe Anonyome des Sucreries de Saint Jean vs. Juan Caldas, Commissioner of Finance of the Municipality of Caguas, Porto Rico,* unreported (Appendix E). The *Arroyo* case was heard and disposed of by the Supreme Court of Porto Rico and by the Court of Appeals along with the instant case.

Assignments of Error.

It is claimed by petitioner that the Court of Appeals erred in six respects (*Petition for Certiorari*, pp. 3-4) as follows:

> "(a) In holding that there had already been imposed a license tax upon the respondent herein for conducting the business of a sugar mill for the year 1921, when the Municipal Assembly of Carolina levied the tax upon the manufacture of sugar within the Municipality by the ordinance enacted February 17th, 1921, effective after July 1st, 1921.
>
> "(b) Assuming that a license tax had already been imposed upon respondent for the year 1921 for conducting the business of a sugar mill, the Circuit Court of Appeals erred in holding that the tax upon the manufacture of sugar imposed by the ordinance of February 17th, 1921, effective after July 1st, 1921, was double taxation and therefore invalid.
>
> "(c) In holding that it was the intention of the Legislature of Porto Rico that any excise tax which should be levied by the Municipality should be one other than those enumerated in Act No. 26 of the Legislature of 1914 re-enacted by the Legislature in 1920, (d) of section 9 of Act No. 9.
>
> "(d) In holding that the Municipality was not authorized to enact the ordinance of February 17th,

1921, by the Act of Congress of 1917 known as the Organic Act for Porto Rico, or by the Legislature of Porto Rico.

"(e) In holding that the tax imposed under the ordinance of Feb. 17th, 1921, imposing a tax upon the manufacture of sugar was a constituent element of a business already taxed by a license tax, and was therefore and [*sic*] not effective.

"(f) In reversing the judgment of the Supreme Court of Porto Rico which upheld the validity of the tax imposed by the ordinance of February 17th, 1921."

The recitals in assignments (a) and (b) of what was held by the Court of Appeals are without foundation in fact (295 Fed. 803, 809). It was not even suggested there either that a license tax for conducting the business of a sugar mill had actually been imposed by the Municipality of Carolina, nor that, if so, the ordinance tax would be invalid because in violation of a prohibition against double taxation. In consequence the first and second assignments of error may be ignored.

In the opinions below there was discussion of (1) whether the Porto Rican legislature authorized the municipality to enact the ordinance; (2) if so, whether the insular statute is in conformity with the Organic Act; (3) whether the tax violates certain restrictions in the Constitution and in the Organic Act. The sole issues raised are covered by those questions.

The Ordinance.

"Municipal Government of Carolina.—Porto Rico.—Municipal Assembly.—Ordinance imposing a tax of ten cents on every hundredweight of sugar manufactured in this municipality in order to meet the budgetary appropriations for the year 1921 to 1922. * * * Whereas subdivision 4 of section 26 of the Municipal

Law empowers the municipalities to levy taxes and excises of whatsoever nature. * * * Whereas this municipality is short of the necessary funds to meet its budgetary expenses for the fiscal year 1921-1922. * * * Now, therefore, be it resolved by the Municipal Assembly of Carolina, P. R. * * *

"Sec. 1. That as and from July 1, 1921, and during the fiscal year 1921-1922, a tax of ten cents shall be imposed and collected by the Municipal Treasurer on every hundredweight of sugar manufactured in the Municipal District of Carolina, the collection of which shall conform to the memoranda furnished by the respective factories.

"Sec. 2. The Municipal Commissioner of Finance is hereby authorized, either personally or by any of the employes of his department, to proceed at intervals to make investigations to ascertain whether the statements furnished by the manufacturers of sugar conform strictly to the number of hundredweights manufactured. * * *

"Sec. 3. The collection of the aforesaid tax shall be made on any day of the months of February, April and June of the year 1922. The amounts so collected shall be used in the technical study of a scheme for the proposed establishment of communities by this municipality; for the erection of inexpensive school buildings and living quarters for teachers in the communities; for the acquisition of lands on which to form such communities, the organization thereof and of school farms.

"Sec. 4. Any person, association or corporation that by false or insidious propaganda or by any other unlawful or malicious means shall attempt to violate or should violate or be the cause of the violation, or shall attempt to delay or be the cause of any delay in the enforcement of any of the provisions of this ordinance, shall be liable to a minimum fine of from five to fifty dollars or imprisonment in jail for from five to fifteen

days, or to both penalties at the discretion of the court. * * *

"Sec. 5. Any ordinance or resolution, or part thereof, in conflict herewith, is hereby repealed. * * *

"Sec. 6. This ordinance, which is unanimously adopted by the members of the Municipal Assembly of this city in session assembled, shall begin to take effect twenty days after its publication in the ordinary way. * * * Approved this seventeenth day of February, 1921" (R. 1-2).

Propositions.

1. The legislature of Porto Rico did not authorize the municipality to levy the tax.

2. The clauses in the Municipal Law upon which alone the ordinance is based fail to comply with the requirement in the Organic Act that taxes for municipal purposes be provided and defined by the legislature.

3. As a levy on property the tax is invalid, because the ordinance imposes a burden which is not uniform and deprives of due process of law.

Argument.

I.

The legislature of Porto Rico did not authorize the municipality to levy the tax.

Porto Rico, being "territory * * * belonging to the United States," is governed by Congressional legislation (*Constitution*, Article IV, section 3). It derives its powers exclusively from the Organic Act (*Balzac vs. Porto Rico*, 258 U. S. 298, 304-314; *Benedicto vs. Porto Rican American Tobacco Co.*, 256 Fed. 422, 425, 1st C. C. A., 1919). Purporting to rely upon the grant in the Organic Act (Appendix A), the legislature of Porto Rico enacted the Muni-

cipal Law (Appendix D). The sole authority of a muni
cipality is that transmitted to it by the Municipal Law

Assuming that the Municipal Law in every respect com
plies with the Organic Act, the first inquiry is whethe
that law undertook to empower a municipality to levy such
a tax as that laid by the ordinance.

Two sections of the Municipal Law provide for taxation
by a municipality. Section 26, subdivision 4, confers on
the municipal assembly "sole authority * * * to levy taxe
and excise taxes of any kind." Section 49 defines the item
of which "the municipal revenues shall consist"—several o
which are taxes. The sections are complementary. Wha
one describes the other distributes. If a particula
power be granted by one it is included in the other.

Section 49 does not in terms mention taxation of manu
factured articles or of the process of manufacture. Sub
division (d) of that section deals with taxes provided b
"Act No. 26 of March 28, 1924" (hereinafter referred t
as Act No. 26); subdivision (f), with "any other impost
excise or tax." No other subdivision of the section con
tains any authorization on which it is possible to base th
ordinance. If the ordinance is to be sustained, it mus
find its warrant in subdivision (d) or subdivision (f).

Section 49 is in part as follows:

> "That the municipal revenues shall consist of * *
>
> (d) License taxes provided by Act No. 26 of Marc
> 28, 1914, * * *
>
> (f) Any other impost, excise or tax * * * provide
> the object or matter of taxation is not also the objec
> or matter of any federal or insular tax;"

Respondent urges that if the ordinance tax be upon prop
erty, it violates the restraint in (f) against duplication
an insular tax; if an excise, it does not comply with (d) an
is not comprehended within (f).

The Porto Rican legislature (Acts of March 12, 190
and April 13, 1916, as amended; Appendix B) itself in

posed taxes, for both insular and municipal purposes, "upon the value of all real and personal property in Porto Rico." Subdivision (f) of section 49 of the Municipal Law permits a levy thereunder only upon condition that "the object or matter of taxation is not also the object or matter of any federal or insular tax." If the ordinance be construed to impose a tax upon respondent's sugar as property, it is manifestly unlawful; the sugar was already subject to a direct tax—it was already "the object or matter" of an insular tax. Hence, upon the assumption that the ordinance tax is levied on property, it is plainly prohibited by the proviso in subdivision (f).

On the other hand, let the ordinance be interpreted as laying an excise. Can that be justified?

Act No. 26 (Appendix C), continued in force by subdivision (d) of section 49, authorizes a tax for municipal purposes. The tax imposed by Act No. 26 is based on volume, measured in terms of gross receipts, of business transacted (secs. 1, 4). It applies to every "commercial or industrial organization engaged in any of the businesses or industries * * * mentioned" (sec. 1). Among those mentioned, for which rates are specified, are "the businesses of sugar and molasses mills" (secs. 2, 3).

The relevant parts of Act No. 26 are as follows:

> "Sec. 1. That the municipal councils of all the municipalities of the Island of Porto Rico are hereby authorized to levy and collect, under the provisions of this Act, on and from every person, firm, association, partnership, corporation or other form whatsoever of commercial or industrial organization engaged in any of the businesses or industries hereinafter mentioned, the taxes hereinafter enumerated * * *.
>
> Sec. 2. That the businesses or industries upon which the taxes herein provided may be levied, shall be the following: * * *.
>
> *Group C.* The businesses of sugar and molasses mills * * *.

> Sec. 3. * * * said tax shall be paid, * * * on the basis of the volume of business transacted during the calendar year and immediately preceding * * * as hereinafter provided, and at the following rates: * * *
>
> Those of *Group C*:" (Up to $1,000,000 at the rate of 25¢, and in excess of $1,000,000 at 12½¢, annually for each $1,000 of "business transacted").
>
> "Sec. 4. That for the purposes of this Act the volume of business shall be understood to be the gross receipts in any municipality of the business or industry, from its business transactions in Porto Rico, its gain or profits not alone to be considered;"

The ordinance, set out at length near the beginning of this brief (R. 1-2), lays a tax on "sugar manufactured" and requires the collection to "conform to the memoranda furnished by the respective factories" (sec. 1). The proper municipal official is authorized, periodically, "to ascertain whether the statements furnished by the manufacturers of sugar conform strictly to the number of hundredweights manufactured" (sec. 2).

Are the tax authorized by Act No. 26 and the tax laid by the ordinance the same, or is one included in the other? If so, does the clause in the Municipal Law empowering a municipal assembly to lay a tax *different from* that authorized by Act No. 26 confer authority to impose the ordinance tax? The answers to these questions depend merely upon statutory construction. They are the turning point on this branch of the case.

A *sugar mill* and a *sugar factory* are obviously identical. They were treated as the same in the tax laws for Porto Rico during the Spanish rule (*Senate Document* No. 300, p. 47, 56th Congress, 1st Session) and in the insular laws preceding the Jones Act (*Revised Statutes and Codes of Porto Rico*, secs. 56, 61, 1874, Group VI, 2355; *Laws* of 1906, p. 129, group VI; *Laws* of 1910, p. 113, p. 121, sec. 5; *Laws* of 1913, p. 154; *Laws* of 1914, p. 96). It would be trifling with language to endeavor to distinguish them.

A tax on the privilege of conducting a sugar mill necessarily involves the imposition of a levy upon its carrying on the process of manufacturing sugar. Unless it manufactured sugar, the plant would not be a sugar mill; if it manufactures sugar, it is a sugar factory. Because the payment which may be exacted from a sugar mill under Act No. 26 is in proportion to the proceeds derived from its output, it would be impossible thereunder to collect a tax from such a mill unless it produced sugar. The production of sugar is manufacture. That is the very process which is taxed by the ordinance—on the present assumption that it imposes an excise. The conclusion is inescapable that the thing that Act No. 26 authorizes to be taxed is actually taxed by the ordinance. While the amount of the levy is determined in one instance by volume of business done and in the other by weight, nevertheless every concern producing sugar by a process of manufacture, comprehended within either Act No. 26 or the ordinance, is subject to the burdens resulting from both.

Subdivision (f) of section 49 permits levies of any "*other* impost, excise or tax." Neither Act No. 26 nor the ordinance deals with imposts. On this branch of the argument it is assumed that neither involves a direct tax. Act No. 26 authorizes an excise. The ordinance is treated as imposing an excise. If the latter excise be the same as or be embraced within the former, it is obviously unauthorized. Subdivision (d) recites taxation under Act No. 26 as an allowable source of municipal revenue. "Other" types of excise, under subdivision (f), cannot possibly include an excise covered by subdivision (d).

When it passed the ordinance the municipality had the right to proceed under Act No. 26. It failed to do so. Merely casual inspection demonstrates this. For example, the statute prescribes a tax upon transactions conducted, stated in terms of value in dollars; the ordinance, a tax upon the same transactions, stated in terms of quantity irrespective of price or value. Accordingly, the ordinance cannot be sustained as an attempted exercise of power conferred by subdivision (d).

It may be said that the business of carrying on a sugar mill is more extensive than the conduct of a sugar factory. For example, it may be further said that a sugar mill markets the sugar produced by it, while a sugar factory might confine itself to manufacturing sugar. If this be conceded, it does not change the result; it would merely be equivalent to asserting that the manufacture of sugar is only a part, though an essential part, of the business of a sugar mill.

A tax upon a necessary element of a business, however, is a tax upon the business itself (*Tuscaloosa vs. Hollezstein*, 134 Ala. 636; *Ex parte R. W. Simms*, 40 Fla. 432, 441-2; *Canova vs. Williams*, 41 Fla. 509, 518-9; *Hewin vs. Atlanta*, 121 Ga. 723, 729-737; *Hotelling vs. Chicago*, 66 Ill. 289, 291-2; *Commonwealth vs. Fowler*, 96 Ky. 166, 170-1; *Commonwealth vs. Pearl Laundry Co.*, 105 Ky. 259, 265-6; *Newport vs. Fitzer*, 131 Ky. 544, 546-9; *Williams vs. Garignes*, 30 La. Ann. 1094; *Walker vs. New Orleans*, 31 La. Ann. 828; *Carney vs. Hamilton*, 89 Miss. 747; *Bell vs. Watson & Bro.*, 3 Lea (Tenn.) 328, 329-331; *Vosse vs. Memphis*, 77 Tenn. 294). Hence when the business in its entirety is already taxed, an authorization in general terms to levy any "other" tax does not confer power to impose an additional tax upon such element.

In *Bell vs. Watson & Bro., supra*, a tax, at so much per stall, was imposed upon the privilege of keeping a livery stable; another, at a fixed sum on each vehicle, for the privilege of running hacks for profit. In holding that one who paid the former was not subject to the latter tax, because running hacks was included in the conduct of a livery stable, it was said (pp. 329, 330, 331):

> "The real question, however, is whether the Legislature intended that the keeper of a livery stable should pay a license tax for the privilege of carrying on the business, and also separate license taxes for the privilege of exercising essential parts of that business. * * * Whatever power the Legislature may have

to levy double taxes, the presumption always is against such an intent. The statute will not be construed so as to impose duplicate taxation, unless the construction is required by its express words or necessary implication. * * * The safe and sound rule of construction of revenue laws is to hold, in the absence of express words plainly disclosing a different intent, that they were not intended to subject the same property to be twice charged for the same tax, nor the same business to be twice taxed for the same privilege.

"In order to prevent misconstruction, it is proper to add that the present rule applies only in a case where the occupation or business, the privilege tax upon which would be a double charge, is an essential part of the business for the exercise of which a license had been taken out."

It has been suggested that the record does not disclose whether the municipality ever levied or collected a tax under Act No. 26. That, however, is immaterial. All that it is pertinent to ask is whether subdivision (f) authorized the ordinance. That it did not is just as true if no tax were levied or paid, as it would be if a tax was in fact levied and paid, under Act No. 26. As previously stated, the sole excises which subdivision (f) authorized to be imposed were ones different from the excises authorized by Act No. 26 or by any subdivision of section 49 preceding subdivision (f). It follows that if in any part of section 49 outside of subdivision (f) there was authorization to impose such an excise as that embodied in the ordinance, then necessarily subdivision (f) conferred no authority to enact the ordinance—because a tax authorized by any part of section 49 outside of subdivision (f) could not possibly be included in the authorization by subdivision (f) to levy "other" taxes. As already said, the ordinance tax cannot be sustained as to an exercise of the authority conferred on municipalities by Act No. 26, among other things, for the reason that the ordinance does not comply

with the requirement in Act No. 26 that the rate of taxation thereunder be proportionate to the volume of business done by the factory.

Again, it is pointed out by petitioner that double taxation is generally allowable; that usually whether a taxpayer should be mulcted twice on the same account is merely a matter of policy. Authorities are cited sustaining the power of either Congress or a State concurrently to impose both types of excise now under discussion. Attention is called to instances of valid Congressional and State legislation which taxed a constituent element of a business already taxed as a whole. All this, however, is beside the mark; the conclusion sought to be drawn does not follow. The considerations adverted to relate to the extent to which authority may be conferred—not to the extent to which it was the purpose of a legislative body to exercise an undisputed authority. The problem for the moment is one of intent—not of power; the determining factor here is what was put in to the Municipal Law—not what could have been put there. What did the legislature of Porto Rico mean when it framed subdivisions (d) and (f)? The answer seems plain and unavoidable. When it was said that *other* excises might be levied, the words necessarily excluded from (f) everything included in (d). If (d), by virtue of retaining Act No. 26 in force, authorized a municipality to levy an excise on the manufacture of sugar, then (f) did not.

Apparently petitioner conceives that the argument of respondent in this connection is completely answered if it be established that the ordinance did not impose a tax which was a duplication of an already existing insular tax. If this be the position of petitioner, he has wholly misinterpreted the contention of respondent. What respondent says, and what is relied upon on this branch of the case, is that (1) if the ordinance tax be on property, then it is a duplication of the insular tax on property levied by the Acts of 1908 and 1916 (Appendix B) and hence would

violate the proviso in subdivision (f) of section 49 of the Municipal Law; (2) on the other hand, if the ordinance tax be treated as an excise, then—wholly irrespective of whether or not it duplicates an insular tax—subdivision (f) conferred no authority to levy it, because the word "other" in subdivision (f) excluded from the authority conferred by that subdivision any authorization embraced in a preceding subdivision, and subdivision (d) of section 49, by continuing Act No. 26 in effect, itself authorized the imposition of an excise upon the business of conducting a sugar mill, which either is the same as or includes the manufacture of sugar.

Irrespective therefore of whether the ordinance tax be direct or be indirect, be upon property or be an excise, as matter of statutory interpretation the legislature of Porto Rico never authorized the Municipality of Carolina to levy it.

II.

The clauses in the Municipal Law upon which alone the ordinance is based fail to comply with the requirement in the Organic Act that taxes for municipal purposes be provided and defined by the legislature.

The Municipal Law (Appendix D) grants to the municipal assembly power to levy "taxes and excise taxes of any kind" and any "impost, excise or tax" other than specified types which are of no concern here. These words, contained in subdivision 4 of section 26 and subdivision (f) of section 49 of the Municipal Law, are the only source from which the ordinance can spring.

Section 3 of the Organic Act (Appendix D) provides that "taxes and assessments on property, internal revenue, and license fees * * * may be imposed for the purposes of the Insular and Municipal Governments, respectively, as may be provided and defined by the Legislature of Porto Rico." These words constitute the entire founda-

tion on which the quoted part of the Municipal Law can rest. It is obvious from inspection that both clauses are general in phraseology. If either clause be unauthorized, because of lack of definiteness in the form in which the legislature has attempted to confer power on the municipalities, both are. They embrace excises as well as taxes on property. Consequently, in reaching a conclusion it is immaterial to consider whether the ordinance tax is imposed on property or is an excise.

Does the Organic Act require the legislature itself to provide and define municipal taxes? If so, has the legislature provided and defined the ordinance tax?

The pertinent portions of the Organic Act are as follows:

> "Sec. 2. That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the law. * * *
>
> That the rule of taxation in Porto Rico shall be uniform. * * *.
>
> Sec. 3. That no export duties shall be levied or collected on exports from Porto Rico, but taxes and assessments on property, internal revenue, and license fees, and royalties for franchises, privileges and concessions may be imposed for the purposes of the Insular and Municipal Governments, respectively, as may be provided and defined by the Legislature of Porto Rico;"

Discussion of the clauses in section 2 will be deferred. They should be borne in mind, however, in connection with the requirement in section 3 that the legislature provide and define the taxes to which that requirement applies.

In the beginning let it be noted that the taxes dealt with in section 3 of the Organic Act are municipal as well as insular. The use of the word "respectively" puts that beyond dispute. Congress was free to retain to itself the function of taxation in Porto Rico. It was free

to confer that for municipal purposes on the legislature, on the municipalities or on whomsoever it saw fit. It chose to say that municipal taxes should be only "as may be provided and defined" by the legislature.

Let it also be noted that the mandate to the legislature is not confined to the drawing by it of a line between the uses which shall be made by the two types of government of the gross amount of revenues from taxation. The direction goes much further. The authority to impose relates to taxes for municipal as well as for insular purposes. That authority is explicitly modified by the clause, "as may be provided and defined by the legislature." It follows that unless the legislature provides and defines, the municipalities can acquire no power to tax; until the legislature provides and defines, the municipalities have no power to tax; the sole power to tax which the municipalities can ever get is that which is provided and defined by the legislature.

After specifying certain kinds of municipal taxes which do not include the ordinance tax, the legislature undertook to transfer to the municipal assemblies all the unused portion of its own power to tax for municipal purposes. That is the only permissible interpretation of the sweeping language employed. No more comprehensive words about taxation could be found than "taxes and excise taxes of any kind" or any "impost, excise or tax." It seems manifest that this was not either *provision* or *definition* by the legislature. If so, it is equally manifest that the restraint prescribed by Congress was infringed.

In dealing with municipal taxes the Municipal Law sets no limit upon the subject, rate or duration. There is no qualification. The effort is to delegate completely. In no sense is the content of the exaction either "provided" or "defined" (*Robert J. Boyd Paving & Construction Co. vs. Ward*, 85 Fed. 27, 34-5, 38, 8th C. C. A., 1898; *Societe Anonyome des Sucreries de Saint Jean vs. Juan Caldas, Commissioner of Finance of the Municipality of Caguas, Porto Rico*, Appendix E, 4th point).

In the *Boyd* case, *supra*, the question was whether a city of the fourth class had authority to build sewers at the expense of property benefited. Section 7, article 9, of the State constitution directed the general assembly to "provide, by general laws, for the organization and classification of cities and towns"; also that "the power of each class shall be defined by general laws." The legislature allowed municipalities of the third and fourth class, by popular referendum, to determine for themselves whether to exercise the authority in controversy (*Laws of Missouri*, 1893, p. 101). Referring to that statute, the court said (p. 35):

> "* * * this law fails to define the power of the members of the fourth class of municipal corporations relative to the subject of which it treats as required by the provision of section 7 under consideration. That section requires this power to be defined by law. To define is 'to fix, establish, or prescribe authoritatively.' 2 Cent. Dict. p. 1503, 'Define,' 2. This law leaves the voters of the various municipalities to 'fix, establish, or prescribe authoritatively' what power their respective municipal authorities shall have under it, and constitutes the records of their respective cities the only evidence of the extent of the power vested in them under this law. To state these facts is to demonstrate the proposition that here is no definition by general law of the power of municipal corporations of the fourth class to construct sewers at the expense of the property benefited, for an examination of the law gives no information whether any of the members of that class have adopted its provisions or acquired the powers it offers."

The phrases "provide by general laws" and "defined by general laws" and the phrase "provided and defined by the legislature" are exactly synonymous in substance

and effect. If the *Boyd* case be sound therefore, the conclusion is inescapable that the grant of power in section 3 of the Organic Act was exceeded in the attempt by the Porto Rican legislature to transfer that power undiminished to the municipalities; the effort was abortive.

There is nothing in the Municipal Law or elsewhere, emanating from the legislature of Porto Rico, which either provides or defines the character of tax that is embodied in the ordinance. On the contrary, by the broad language in which subdivision 4 of section 26 and subdivision (f) of section 49 of the Municipal Law are expressed, the legislature attempted to abdicate its own functions and to pass them to the municipalities. Under these general terms, so long as duplication of federal and insular taxes was avoided, a municipality was left free to select any type of tax it chose. The disobedience by the legislature of the limitation imposed renders invalid the clauses of the Municipal Law under discussion.

It is said by petitioner that municipalities customarily exercise delegated power; that section 37 of the Organic Act expressly authorized the legislature of Porto Rico "to create, consolidate and reorganize the municipalities;" and that power of taxation is an essential incident of a municipality (*United States ex rel Ranger vs. New Orleans*, 98 U. S. 381, 393, 397). All these things may be conceded. It does not follow, however, either that Congress may not depart or that it has not departed from the rules which ordinarily apply to municipalities in the United States.

In the first place, it is indisputable that it was competent for Congress to withhold from municipalities in Porto Rico any authority whatever to levy taxes or to attach any condition it saw fit to a grant to them, either directly or through the legislature of Porto Rico, of the power of taxation (*Mormon Church vs. U. S.*, 136 U. S. 1, 42; *Parsons vs. District of Columbia*, 170 U. S. 45, 51-2, 56; *Simms vs. Simms*, 175 U. S. 162, 168; *Downes vs. Bidwell*, 182 U. S. 244, 267-8; *Binns vs. U. S.*, 194 U. S. 486,

491-2; *Oklahoma vs. Atchison, etc., Ry.*, 220 U. S. 277, 285; *Christianson vs. King Co.*, 239 U. S. 356, 362; *Balzac vs. Porto Rico*, 258 U. S. 298, 304-314).

In the second place, Congress did impose specific limitations upon the authority of municipalities to levy taxes. Among these limitations is the express requirement that whatever taxes are levied for the benefit of municipalities shall be "provided and defined by the Legislature of Porto Rico."

Up to this point consideration has been confined to the words employed. If account be taken of the purpose, that will but add support to the conclusion reached.

By the Jones Act Congress was conferring new powers of taxation and prescribing new safeguards for the rights of Porto Ricans. Manifestly a distribution of authority, either directly by Congress itself or through the Porto Rican legislature, to a large group of municipalities would increase the difficulty of preserving and enforcing these rights. Accordingly, in granting authority to legislate concerning taxes, Congress prescribed that for municipal as well as for insular purposes the guiding hand should continue to be the legislature of Porto Rico. The object of requiring legislative control of taxation for both purposes was to assure the accomplishment of the design of Congress in conferring the rights defined in section 2. The means adopted were appropriate to this end; indeed, limitation of the tax power to the extent that its exercise must be by or through the legislature itself was the only means that was appropriate.

Without regard therefore to details or to the extent to which the legislature may go in employing the municipal assemblies in raising revenue for the support of the municipalities, it is manifest that the will of Congress would be wholly defeated if the Organic Act were held to vest in the Porto Rican legislature power to delegate to municipal assemblies unlimited power of taxation.

Moreover, the Organic Act requires "the rule of taxation" in Porto Rico to be uniform. As elsewhere pointed

out, mere geographical uniformity is not enough. There must at least be uniformity in methods and subjects of levies authorized; also there must be equality of burden—certainly as to taxes on property; possibly as to excises also—in municipal as well as in insular taxation. Such equality cannot be maintained except through a single body; as that body, Congress selected the legislature. The necessity for that device is illustrated by the fact that the entire schemes for the levies on sugar by Arroyo and Caguas (295 Fed. 803; Appendix E) are very different from the scheme for the levy on sugar by Carolina. It is probable, in part at least, in order to preserve this uniformity that the legislature is directed to provide and define taxes for the municipalities (*Boyd* case, *supra,* pp. 36-7; *Caguas* case, Appendix E, 3rd point).

It is further urged by petitioner that the Organic Act discloses on its face the design of Congress to promote local self government in Porto Rico. It is suggested that an interpretation should be favored that will promote this policy. Agreement with these contentions, however, is not at variance with the insistence that an express duty was put upon the legislature and an implied prohibition on the municipalities in regard to taxes. Moreover, it is to be borne in mind that under the Spanish system control of all local affairs was retained by a strong central government (Appendix E, 4th point); also that, in contradistinction to the legislatures of the States, which possess all power of a legislative nature not denied to them by the Federal or State constitutions, the legislature of Porto Rico has only such power as is affirmatively granted. The language of section 37 of the Organic Act permits the legislature of Porto Rico wide latitude in the regulation of municipalities; but that in no wise relieves it from the obligation itself to provide and define municipal taxes.

In view of the failure of the Municipal Law to comply with the restriction in the Organic Act the tax clauses on which the ordinance rests are void.

III.

As a levy on property the tax is invalid, because the ordinance imposes a burden which is not uniform and deprives of due process of law.

Section 2 of the Organic Act (Appendix A) requires that "the rule of taxation in Porto Rico shall be uniform." This is one of a group of new provisions, derived chiefly from constitutions of the States, which Congress enacted in 1917 as a bill of rights for Porto Rico (*Senate Report* No. 579, p. 2, 64th Congress, 1st Session; *Congressional Record*, vol. 54, pp. 1325, 2248).

The phraseology having been taken from those constitutions, presumptively it is to be interpreted in the way it had been construed previously by the States (*The Abbottsford*, 98 U. S. 440, 444; *McDonald vs. Hovey*, 110 U. S. 619, 627-8; *United States vs. Mooney*, 116 U. S. 104, 106; *Logan vs. United States*, 144 U. S. 263, 301; *Lawder vs. Stone*, 187 U. S. 281, 293; *Kepner vs. United States*, 195 U. S. 100, 124; *Standard Oil Co. vs. United States*, 221 U. S. 1, 59; *Norfolk Southern R. R. Co. vs. Chatman*, 244 U. S. 276, 280-1; *United States vs. Merriam*, 263 U. S. 179, 187). It will be given the same meaning unless the context shows a contrary intent—and no such appears here.

The State courts had held that the uniformity required meant equality of burden, on the basis of value, in the operation of the tax laws (*Exchange Bank of Columbus vs. Hines*, 3 Ohio St. 1, 15-6; *Wasson vs. Commissioners*, 49 Ohio St. 622, 635-6; *State vs. Jones*, 51 Ohio St. 492, at p. 505; *Knowlton vs. Supervisors of Rock Co.*, 9 Wis. 410, 420-1; *Attorney General vs. Winnebago Lake, etc., Co.*, 11 Wis. 35, 39-42; *Weeks vs. City of Milwaukee*, 10 Wis. 242, 256-8, 262-3; *State ex rel Reedsburg Bank vs. Hastings*, 12 Wis. 47).

In Ohio the constitution requires "taxing by a uniform rule." In the *Hines* case, *supra* (pp. 15, 16), it was said:

> "Uniformity in taxing implies equality in the burden of taxation; and this equality of burden cannot exist without uniformity in the mode of assessment, as well as in the rate of taxation. But this is not all. The uniformity must be co-extensive with the territory to which it applies. * * * But the uniformity in the rule required by the constitution, does not stop here. It must be extended to *all property* subject to taxation, so that all property may be taxed alike, equally—which is taxing by a uniform rule. * * * the rule of uniformity in taxation, required by our State constitution, has a direct reference to the things taxed—to all taxable property, and forbids discrimination in the burden upon the different subjects of taxation."

In Wisconsin the constitution provides, in the precise words of the Organic Act, that "the rule of taxation shall be uniform." In the *Knowlton* case, *supra* (pp. 420, 421), it was said of the clause:

> "Its mandate, it is true, is very brief, but long enough for all practical purposes; long enough to embrace within it clearly and concisely the doctrine which the framers intended to establish, viz: that of equality * * *; and there can be no uniform rule which is not at the same time an equal rule, operating alike upon all the taxable property throughout the territorial limits of the state, municipality or local subdivision of the government, within and for which the tax is to be raised."

The section in the Wisconsin constitution containing the uniformity rule also provides that "taxes shall be levied upon such property as the legislature shall prescribe." It was held that the latter clause empowers the legislature to create reasonable exemptions and classifications (*Milwaukee & Mississippi R. Co. vs. Board of Su-*

pervisors, 9 Wis. 431, 436-7, 449; *Wisconsin Central Railroad Co. vs. Taylor County*, 52 Wis. 37, 57-76, 88-96; *State ex rel Sanderson vs. Mann*, 76 Wis. 469, 476-7; *State vs. Whitcom*, 122 Wis. 110, 118-9; *Kingsley vs. Merrill*, 122 Wis. 185, 194-8; *Chicago & N. W. R. Co. vs. State*, 128 Wis. 553, 591-604; *Milwaukee County vs. Halsey*, 149 Wis. 82, 93; *State ex rel Bernhard Stern & Sons vs. Bodden*, 165 Wis. 75, 81-2); but this holding in no wise weakened the interpretation of the uniformity clause as requiring that in taxation of like property there shall be imposed equality of burden in terms of value (*Chicago & N. W. R. Co. vs. State*, 128 Wis. 553, 602-616).

While of course a matter for determination by the States, it may be noted that the principle embodied in the quotations from the Ohio and Wisconsin cases apparently has been approved by this Court (*Gilman vs. The City of Sheboygan*, 2 Black 510, 513-8; *Township of Pine Grove vs. Talcott*, 19 Wall. 666, at p. 675; *Cummings vs. National Bank*, 101 U. S. 153, 158; *Greene vs. Louisville & Interurban R. R. Co.*, 244 U. S. 499, 515).

Construing the words, "the rule of taxation * * * shall be uniform," in the same sense in which they were employed by the States from whose constitutions they were taken, it is clear that the insular legislature is restrained from imposing taxes which arbitrarily discriminate against particular property or which do not treat substantially alike all similar property or which disregard value in prescribing the toll demanded.

The ordinance tax is laid only on sugar manufactured within the territorial limits of the Municipality of Carolina; it does not affect sugar produced elsewhere which is marketed there. A fixed sum is exacted for each hundred weight locally manufactured without regard to variation in its grade, quality or value. Moreover, the tax is imposed exclusively upon sugar; it does not extend to any other commodity or to the manufacture of any other commodity. There is no pretense of classification. It is obvi

ous therefore that if uniformity of burden be required, the ordinance is void.

It has been suggested that the test of uniformity is geographical only. *Knowlton vs. Moore*, 178 U. S. 41, is relied on. The vice of the contention is that the uniformity there discussed satisfies merely the requirement of Article I, section 8, of the Constitution. That relates exclusively to "duties, imposts and excises," laid by Congress itself, within the territorial limits of the United States; it does not apply to the limitation which Congress, in the exercise of its authority to prescribe regulations for the government of the property of the United States, has injected into the Porto Rican tax system as an added requirement.

It has also been suggested that, while there must be uniformity in insular taxation, it is not necessary in municipal taxation. By its express terms section 2 applies "in Porto Rico." Upon its face this means throughout Porto Rico. If the restriction related only to insular taxation, the protection would be illusory; it could be easily nullified. It would be anomalous if the legislature could confer upon municipalities power more extensive than its own. It would be tantamount to an agent being less restrained than his principal or to a stream rising higher than its source. Moreover, as section 3 plainly governs both municipal and insular taxation, no reason is apparent for confining the immediately preceding section to a smaller field; and section 23 of the Municipal Law expressly extends to municipal assemblies the limitations imposed on the legislature by the Organic Act.

In some quarters it is said or unmistakably implied that where—as here—the primary purpose of an excise is revenue, the uniformity rule applies to it (for example, Dodge, J., dissenting in *Nunnemacher vs. State*, 129 Wis. 228; *St. Louis vs. Spiegel*, 75 Mo. 145; see also *Ward vs. Maryland*, 12 Wall. 418, 429, 431; *St. Louis vs. United Railways Co.*, 210 U. S. 266, 273, 279). The weight of authority confines application of the rule to taxes on property (for example, *People vs. Naglee*, 1 Cal. 232, 253;

Beebe vs. Wells, 37 Kans. 472, 475; *State vs. Philadelphia, etc., R. Co.*, 45 Md. 361, 379; *State vs. Applegarth*, 81 Md. 293, 300; *State vs. Richards*, 52 N. J. L. 156, 158; *Railroad vs. Reidsville*, 101 N. C. 404, 407; *Baker vs. Cincinnati*, 11 Ohio St. 534, 540-1; *Cincinnati Gas Light, etc., Co. vs. State*, 18 Ohio St. 237, 242; *Rhinehart vs. State*, 121 Tenn. 420, 436; *Pullman P. C. Co. vs. State*, 64 Tex. 274, 275-7; *Chicago & N. W. R. Co. vs. State*, 128 Wis. 553, 588-591; *Nunnemacher vs. State*, 129 Wis. 190, 220-2; *In re Watson*, 15 Fed. 516, note u). So far as discovered the question has not been directly passed on by this Court. Upon the view most adverse to respondent, however, it is indisputable that uniformity, in accordance with valuation, of the burden imposed by taxation on property is essential.

The ordinance requires the tax to be collected by the Municipal Treasurer and the collection to conform to memoranda furnished by the factory. It authorizes the Municipal Commissioner of Finance, personally or through an employee, by investigation to ascertain whether the manufacturer's statement is correct. Certain forms of agitation against and obstruction of enforcement of the ordinance are made crimes.

Nowhere is it provided that there shall be notice to the taxpayer of the quantity of sugar subject to tax or of the amount of money claimed from him or of any charge of error committed by him, nor that he be afforded opportunity for a hearing. The direction to municipal officials is, without condition or qualification, to collect the tax at a fixed rate and to investigate whether information given by the factory is true. They are instructed to conduct inquiries, to exercise judgment, to reach conclusions. These vitally affect the citizen engaged in manufacturing sugar. Through them liabilities may be imposed or attempted. Yet all may proceed—in strict conformity with the authority conferred—with the utmost secrecy and without chance for a protest or objection to be presented or for a revision to be obtained.

Neither in the ordinance nor elsewhere is there provided an opportunity for court review in advance of col-

lection of an assessment of municipal taxes, so as by substitution of a judicial for an administrative hearing to satisfy the requirement of due process (*Hetrick vs. Village of Lindsey*, 265 U. S. 384, 387). It may be suggested that the Act of March 9, 1911 (*Laws of* 1911, p. 124) permits payment under protest of revenue conceived by the taxpayer to be erroneous and suit for its recovery; but that statute applies exclusively to insular taxes and to suits against the insular treasurer and gives a remedy only after the event.

It needs no argument to demonstrate that if the tax be on property, it is invalid—because of lack of a grievance day, in violation of the due process clause of the Fifth Amendment to the Constitution and section 2 of the Organic Act requiring due process of law (*Security Trust Co. vs. Lexington*, 203 U. S. 323, at p. 333; *Central of Georgia R. Co. vs. Wright*, 207 U. S. 127, 138, 142; *Londoner vs. Denver*, 210 U. S. 373, 385; *Coe vs. Armour Fertilizer Works*, 237 U. S. 413, 424-5; *Turner vs. Wade*, 254 U. S. 64, 67-70; *Regal Drug Corp. vs. Wardell*, 260 U. S. 386, 392).

Is the tax imposed on property? If the test be that applied to taxation by Congress within the territorial limits of the United States, it is conceded that the long list of cases from *Hylton vs. United States*, 3 Dallas 171, to *Flint vs. Stone Tracy Co.*, 220 U. S. 107, drawing the line of demarcation between direct and indirect taxes, has firmly established that the tax here is an excise. While the argument is presented with diffidence, a recent decision of this Court, which it is difficult to distinguish in application from the case at bar, apparently holds that this is upon property.

In *Dawson vs. Kentucky Distilleries Co.*, 255 U. S. 288, the statute (*Acts of Kentucky*, 1920, p. 27) imposed what it called "a license tax." The persons required to pay it were those "engaged in the business of storing such (distilled) spirits in bonded warehouses * * * and in removing

same therefrom." The levy was "fifty cents on every proof gallon of said distilled spirits so * * * stored in a bonded warehouse, or withdrawn from a bonded warehouse, or transferred therefrom under bond out of the Commonwealth." The tax accrued when the articles were "removed from the bonded warehouse * * * or transferred under bond out of this State."

This Court said (pp. 292-4) that the tax had none of the ordinary incidents of an occupation tax (*Oliver Iron Co. vs. Lord*, 262 U. S. 172, 177) and was "imposed upon each lot of whiskey at the time it is removed from bond within the State."

In effect here the tax is on the sugar produced by respondent; it is laid upon the article itself. If a tax on whiskey removed be a tax on property, it would seem equally to follow that a tax on sugar manufactured is a tax on property.

To the same effect are *State vs. Cumb. & Penn. R. R.*, 40 Md. 22, 41-2, 50-1; *Thompson vs. Kreutzer*, 112 Miss. 165; *Thompson vs. McLeod*, 112 Miss. 383; *State vs. Bengsch*, 170 Mo. 81, 109-112; *Railway Co. vs. State*, 49 Ohio St. 189, 201-2; *Ellis vs. Frazier*, 38 Oregon 462, 466-8; *State vs. Railroad Corporations*, 4 S. C. 376.

The Foraker Act of 1900 (31 *Stat.* 86, sec. 38) provided as follows:

> "That no export duties shall be levied or collected on exports from Porto Rico; but taxes and assessments on property, and license fees for franchises, privileges, and concessions may be imposed for the purposes of the insular and municipal governments, respectively, as may be provided and defined by *act of the legislative assembly*:" * * *

Section 3 of the Jones Act of 1917 (Appendix A) provides as follows:

> "That no export duties shall be levied or collected on exports from Porto Rico, but taxes and assess-

ments on property, *internal revenue*, and license fees, *and royalties* for franchises, privileges and concessions may be imposed for the purposes of the Insular and Municipal Governments, respectively, as may be provided and defined by the *Legislature of Porto Rico*;"
• • •

The changes made by the later statute are indicated by italics. It may be argued that the use of the words "internal revenue"—immediately adjacent to the authorization of taxes on property—implies an intent by Congress to employ in Porto Rican taxation the test of what is a property tax and what an excise that exists in Federal taxation.

It is true that an excise, measured by quantity of a manufactured article, is a familiar form of revenue in the United States (*Patton vs. Brady*, 184 U. S. 608, 617). The suggestion is that, as the ordinance tax would be an excise if laid by Congress itself, it must be an excise if laid by Porto Rico. The conclusion, however, does not follow. The circumstances are wholly different. When Congress taxes, it is restrained by Article I, sections 2, 8 and 9, of the Constitution. As previously pointed out, those sections, which contain the sole provisions which would require the tax to be classed as an excise if laid by Congress, are not applicable to taxation in Porto Rico.

It may be conceded that the addition by the Jones Act of the words "internal revenue" created or extended the authority to impose excises in Porto Rico. At the moment, however, the inquiry is not about power. The problem is whether the ordinance tax is on property. That can be determined only by considering the nature and operation of the imposition. If economically it is a burden directly on property—as brought out in and is consistent with the decisions of this Court—then it is a property tax for State and hence for Porto Rican purposes (*Veazie Bank vs. Fenno*, 8 Wall. 533, 541-7; *Pollock vs. Farmers' Loan & Trust Co.*, 157 U. S. 429, 573-4, 579-583; 158 U. S. 601, 622-

633). As heretofore urged, the toll taken by the ordinance from a manufacturer of sugar is, so far as concerns the product of his factory, a complete duplication of the toll taken under the law avowedly imposing a tax on property.

It is submitted that to a mind wholly freed from the habit engendered by the historic controversies growing out of the peculiar tax provisions of the Constitution there is persuasive reason, as an original proposition, for treating the tax involved in the instant case as imposed upon property.

IV

The judgment of the Court of Appeals should be affirmed, with costs.

Dated, New York City,
April 17, 1925.

Cay Coll y Cuchi,
George W. Study,
Bouvier, Caffey & Beale,
Attorneys for Respondent.

Francis G. Caffey,
Counsel.

APPENDIX.

A. Organic (Jones) Act of March 2, 1917.

(39 *Stat.* 951-974; *Laws of* 1917 *of Porto Rico,* pp. 6-68; *Fed. Stat. Ann.,* ed. 2, *Supp.* 1918, pp. 608-630; *U. S. Comp. Stat. Supp.* 1919, vol. 1, secs. 3803a-z, pp. 867-891).

Sec. 2.—That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the law. * * *

That the rule of taxation in Porto Rico shall be uniform. * * *.

Sec. 3.—That no export duties shall be levied or collected on exports from Porto Rico, but taxes and assessments on property, internal revenue, and license fees, and royalties for franchises, privileges and concessions may be imposed for the purposes of the Insular and Municipal Governments, respectively, as may be provided and defined by the Legislature of Porto Rico; * * *.

Sec. 25.—That all local legislative powers in Porto Rico, except as herein otherwise provided, shall be vested in a Legislature which shall consist of two houses, one the Senate and the other the House of Representatives, and the two houses shall be designated "the Legislature of Porto Rico."

Sec. 37.—That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including power to create, consolidate, and reorganize the municipalities so far as may be necessary, and to provide and repeal laws and ordinances therefor; * * *.

B. Taxes on property.

(*Political Code of Porto Rico,* sec. 285 et seq.; *Laws of* 1908, pp. 187-8; *Laws of* 1916, p. 132; *Laws of* 1919, pp. 708, 710).

(1) *Act of March* 12, 1908, *as amended.*

That for and during the fiscal year beginning the first day of July, nineteen hundred and eight, and ending the thirtieth day of June, nineteen hundred and nine, and in every succeeding fiscal year, unless otherwise provided by the Legislative Assembly of Porto Rico, there shall be levied and collected, for the purpose of providing insular and municipal revenue, by the Insular Government, a tax of ten one-hundredths of one per cent and by the municipalities a tax of not exceeding ninety one-hundredths of one per cent upon the value of all real and personal property in Porto Rico, and of all personal property of persons residing in Porto Rico, to be ascertained as hereinafter provided, not hereinafter exempted from taxation. * * *. The Treasurer shall pay monthly, pursuant to law, upon the warrant of the Auditor, countersigned by the Governor of Porto Rico, of each dollar collected on account of each municipality, to the treasurer of each local school board the sum of twenty-five cents, to the treasurer of each municipality, to be covered into the "Road Fund," the sum of eight cents, and the balance to the treasurer of the municipality; * * *

(2) *Act of April* 13, 1916, *as amended in* 1919.

Section 2.—That for and during the fiscal year beginning the first day of July, 1919, and ending the 30th day of June, 1920, and for every succeeding fiscal year, unless otherwise provided by the Legislative Assembly of Porto Rico, the rate of the regular general property tax prescribed in an act approved March 12, 1908, (*supra*) * * * to be collected by the Treasurer of Porto Rico on behalf of the municipalities shall be eighty hundredths of one per centum for municipalities of the first class, and ninety hundredths of one per centum for municipalities of the second and third class.

C. Act No. 26 of March 28, 1914.

(*Laws of* 1914, pp. 174-182; *Laws of* 1919, p. 712; *Laws of* 1920, pp. 70, 72).

Sec. 1.—That the municipal councils of all the municipalities of the Island of Porto Rico are hereby authorized to levy and collect, under the provisions of this Act, on and from every person, firm, association, partnership, corporation or other form whatsoever of commercial or industrial organization engaged in any of the businesses or industries hereinafter mentioned, the taxes hereinafter enumerated, at the rates herein prescribed, or at such uniform percentage of said rates as the said municipal councils may prescribe, and the proceeds thereof shall be used in meeting their budgetary expenses; *Provided,* That if any municipality shall levy said taxes, at less than the full rates herein prescribed, for any business or industry subject to taxation in accordance with this Act, a proportional reduction from said full rates shall be made for all businesses or industries within the said municipality; * * *.

Sec. 2.—That the businesses or industries upon which the taxes herein provided may be levied, shall be the following: * * *

Group C.—The businesses of sugar and molasses mills, * * *.

Sec. 3.—That all persons, firms, associations, partnerships, corporations or other form whatsoever of commercial or industrial organizations engaged in any of the businesses or industries specified in the preceding section shall pay to the treasurers of the municipalities in which such businesses or industries are situated, the tax levied by the municipal council, in accordance with this Act; said tax shall be paid, in advance, at the beginning of each quarter of the fiscal year, on the basis of the volume of business transacted during the calendar year and immediately preceding, except in the case of new industries or businesses, as hereinafter provided, and at the following rates: * * *

Those of *Group C*:

For each $1,000 or fraction thereof in excess of the first $500 of volume of business transacted, up to $1,000,000 inclusive	$0.25 a year

For each $1,000 or fraction thereof in excess of the first $1,000,000 of volume of business transacted.....$0.125 a year.

Sec. 4.—That for the purposes of this Act the volume of business shall be understood to be the gross receipts in any municipality of the business or industry, from its business transactions in Porto Rico, its gain or profits not alone to be considered; * * *.

D. Municipal Law of Porto Rico.

(*Laws of* 1919, pp. 684-732; *Laws of* 1920, pp. 52-90).

Sec. 1.—That this Act shall be known as the "Municipal Law," and shall be applicable to all municipalities at present existing, and to such municipalities as may be created hereafter in accordance with the provisions hereof.

Sec. 5.—That the inhabitants of municipalities at present existing and of such municipalities as may be hereafter created in accordance with this Act, are hereby and henceforth constituted into a body politic and juridic under the present name of each such municipality and under such name as each newly created municipality may adopt, * * *. In their aforesaid juridic capacity municipalities may perform such general functions as may be necessary for the proper exercise of their said powers as herein provided, and they may further exercise such powers as are expressly conferred upon them by this Act.

Sec. 8.—That * * * all expenses and obligations incurred or contracted or to be incurred or contracted in or for works and improvements of the municipality, or for the development thereof, shall be paid by the respective municipalities, which shall have power to provide such funds as may be necessary therefor in accordance with the provisions of this Act.

Sec. 9.—That municipalities shall have full legislative and administrative powers in all matters of a purely local nature and connected with * * * municipal revenues, * * *; *Provided*, That such powers shall be exercised subject to

such laws of Porto Rico and of the United States as may be in force, and that no ordinance or resolution shall be passed or action taken which in any way conflicts with any of said laws.

Sec. 13.—(Divides municipalities into three classes according to the amount of total assessments).

Sec. 14.—That for the purposes of the preceding section the assessment made by the Treasurer of Porto Rico for the levying of insular taxes shall govern.

Sec. 15.—That the government of each municipality is hereby vested in a municipal assembly and a council of administration.

Sec. 23.—That all limitations imposed by the Organic Act of Porto Rico on the Legislature and its members shall be applicable, as far as possible, to the municipal assembly and the members thereof.

Sec. 26.—That the municipal assembly shall have sole authority— * * *

4. To levy taxes and excise taxes of any kind; * * *.

Sec. 49.—That the municipal revenues shall consist of—

(a) The revenues and proceeds from municipal property;

(b) The proceeds of any tax on real and personal property in the municipal district levied under proper authorization of the Legislative Assembly, *provided,* That such property is not exempt from taxation by the laws of the United States or by any law enacted by the Legislative Assembly.

(c) Any surcharge of the tax on taxable property of the municipality, * * *.

(d) License taxes provided by Act No. 26 of March 28, 1914, * * * which is hereby declared to be in force;

(e) Fines and costs imposed by peace courts;

(f) Any other impost, excise or tax that may be levied by two-thirds of the members of the municipal assembly, provided the object or matter of taxation is not also the object or matter of any federal or insular tax;

(g) Interest on deposits of funds. * * *.

E. Opinion in Caguas case.

IN THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

SOCIETE ANONYOME DES SUCRERIES DE SAINT JEAN, —vs.— JUAN CALDAS, Commissioner of Finance of the Municipality of Caguas, Porto Rico.	No. 1061 Equity.

OPINION

MUNICIPAL TAXATION.

HAMILTON, J.

The plaintiff operates a sugar central or factory in the municipal district of Caguas, Porto Rico. On January 14, 1920, the municipal assembly of Caguas adopted an ordinance for a special tax for the year 1920 of one per cent on the value in the market on each quintal or hundred pounds of sugar manufactured in any central dedicated to the manufacture of sugar in this municipality, with certain provisions as to how it was to be assessed and collected by the month. The Municipal Commissioner of Finance was authorized to investigate returns made by the central. The fund realized was to be used for paving, preparation and repairs of streets of the city and municipal roads and other work of urgent character. Fine and imprisonment are provided for false reports, violation or delay. The bill in this case filed March 31, 1921, alleges that the plaintiff operates the only factory in this district and that this tax was aimed at plaintiff alone, and that plaintiff already pays a property tax of $1.20% to the Insular Treasury, of which 90% goes to

the municipality of Caguas, and also pays a license tax under the local law of March 28, 1914.

It is alleged that the tax in question is laid by virtue of Section 49 of the Act of Porto Rico, par. F, as follows:

"Any other impost, excise or tax that may be levied by two-thirds of the members of the municipal assembly, provided the object or matter of taxation is not also the object or matter of any Federal or Insular tax."

A restraining order was issued upon this bill and a motion to dismiss has been filed and argued setting up that the bill is without equity. The bill and argument set up a number of supposed defects in the ordinance, and the matter was submitted for decision.

A preliminary question is as to the jurisdiction of this Court to enjoin the collection of taxes. Even where it exists it is a duty which the court looks into narrowly before performance; for taxation is the life blood of a sovereign. It is generally preferable to allow a tax to be levied and collected and then a suit brought to recover it back, for this affects only the persons in question, while an injunction may tie up the whole machinery of government. Nevertheless where a tax offends a constitutional requirement or a provision of the Organic Act, which is the constitution for Porto Rico, the tax is in effect void and no reason is perceived why the tax payer must be put to the necessity of making a payment at all, merely because it is demanded under the veil of official authority. This must be accepted as established law in this court. *Benedicto vs. Porto Rican American Tobacco Co.*, 256 Fed. 422, 425; *Bouret vs. Benedicto*, P. R. Fed. (Opinion in manuscript, Dec. 22, 1919); *Camunas vs. P. R. Rwy. L. & P. Co.*, (opinion manuscript, March 15, 1921); wherein the Circuit Court of Appeals reversed its decision in the case of *Camunas vs. N. Y. & P. R. S. S. Co.*, 260 Fed. 40, and thus in effect conforming to the decision rendered by the P. R. Federal Court on this point in both cases.

2. Under the Jones Act of March 2, 1917, the People of Porto Rico are given extensive powers, in some respect equal to or even greater than those of a state in the Union although Porto Rico has not been incorporated into the Union. Amongst these powers in that of taxation, to which the only limit affixed is that in Section 2 it is provided "that the rule of taxation in Porto Rico shall be uniform." And Section 3 of the Jones Act provides:

Taxes and assessments on property, internal revenue and license fees, and royalties for franchises, privileges and concessions may be imposed for the purposes of the Insular and Municipal governments, respectively, as may be provided and defined by the Legislature of Porto Rico.

There can be no question also that a state or other sovereign, including Porto Rico, may delegate to municipalities the right of taxation, subject to the provisions of the Constitution or of the Organic Act. The people of Porto Rico have delegated such power to municipalities by different laws in the past, as in the act found in Compilation of Porto Rico, 1911, Sec. 1869, being Sec. 70 of the municipal law of 1906.

3. The World War gave a great extension to the law of taxation, many subjects being covered which before had never been dreamed of. The old classification of taxation into property, license, and excise tax would seem still to be controlling. The local municipal law grants to municipalities the right to levy certain occupation taxes, which have already been paid by the plaintiff. So that it would seem that the tax now complained of in order to be valid must be an excise tax. Otherwise it would be an object or matter of taxation already the object or matter of Federal or Insular tax, and therefore not within the scope of municipal powers under Section 49 of the Municipal Act of July 31st, 1919. Wide scope has been given to the subject of excise taxes. What has been said of an occupation tax applies to taxation in gen

eral, that it knows no limit other than the necessity of the public treasury, and the discretion within the constitutional limits of the taxing power. 4 *Dillon, Municipal Corporations,* 2463.

The definition of an excise tax gives an idea of its nature, that is to say, it is something cut off from the price paid on the sale of goods as a contribution to the support of government. 19 Ruling Case Law, 947, Sec. 246. The tax in question may have been intended as an excise tax, because it is imposed upon the proceeds of sales, although it is a matter of convenience collected afterwards by the month. Suppose this to be true, nevertheless under the Organic Act all taxes in Porto Rico must be uniform. If the municipality has the right to lay a tax of 1% it has the right to lay a tax of a larger percentage, for, as Chief Justice Marshall says, the right to tax is the right to destroy. In this case the complaint is not as to the percentage. That may for present purposes be conceded to be reasonable. The question is whether it is uniform. It was conceded on the argument that several municipalities have laid such a tax, but it follows that a great many have not laid such a tax. So that the result at present is that the tax is not uniform, because it is laid by different municipalities, having different needs, and different ideas on the subject of taxation. The result, therefore, is that so far as the plaintiff is concerned taxation is not uniform because of the tax in question, whether it be called license, occupation or property tax. This offends the requirement of the Jones Act as to uniformity. If the legislature has the right to delegate this kind of taxation to municipalities, it must see that the right is uniformly exercised. Otherwise it is putting one enterprise at a disadvantage as compared with another, and thus offending the requirement as to uniformity.

4. It is conceded that the taxation in question was laid under section 49 (f) of the Municipal Law, which

allows local taxation to be levied provided that the object or matter is not also the object or matter of Federal or Insular Tax. This is a new provision in the Municipal Law and does not occur in previous municipal laws. Can it be sustained?

There is no doubt of the principle that a sovereign can delegate to municipalities the right of taxation, within certain limits. This is contained in the Jones Act, Sec. 3 applying to Insular and Municipal governments, but distinctly providing that such taxes respectively "may be provided and defined by the legislature of Porto Rico." The tax in question is not provided and defined by the legislature. On the contrary it was devised by the local authorities of Caguas, and has occurred so far only to a few other municipalities in Porto Rico. It is an extension of local self-government to local taxation for the benefit of municipalities. This is not the plan of the Jones Act. The Spanish method of government was a strong central government, absolute by controlling all local affairs. It is quite true that the American theory is otherwise, but in gradually introducing American institutions into Porto Rico and gradually adapting the people of Porto Rico to American institutions it has seemed wise to confer more power upon the Insular government than has generally been the case in the States. As to taxation, therefore, it is provided that the legislature fix the subjects, object and methods of taxation for all purposes, everything going into the Insular treasury and being when paid divided in certain proportions between the Insular and local treasuries. That would seem to be the reason why it is declared that taxation shall be provided and defined by the legislature of Porto Rico. It would appear to be a very wise provision, designed to meet exactly the conditions which might arise, and the conditions which have in fact arisen in the case at bar and in other municipalities. It would seem that the legislature cannot under the Jones Act delegate to local municipal

councils the taxing power which is expressed in this Sec. 49 (f).

5. The point is raised that the tax in question is a violation of interstate commerce in that the sugar is sold in New York and not in Caguas. The point does not seem to be well taken. Interstate commerce affects all property when it gets in transit, but in order to be an object of interstate commerce the goods in question must start on their interstate journey. The fact that an article is manufactured for the purpose of being shipped to another state does not make it a subject of interstate commerce. It is subject to all local police and tax regulations until it starts on its journey. The exact line which determined this it is sometimes difficult to fix; but the manufacture of sugar and its storing in the factory certainly do not pass over the line and make the sugar a subject of interstate commerce. When it is within the reach of a steamer's tackle it has so started, as was determined by this court in the *Porto Rico Tobacco Co.* case. Whether this may not also be true when it is loaded on trucks for the purpose of transportation to the wharf need not be decided. The case at bar is of sugar still within the factory, if it is to be regarded as affecting the sugar at all, and not as an excise tax. *Gray, Limitation of Taxing Power*, 474, Sec. 938; 17 *Am. & Eng. Ency. of Law*, 70; *Coe vs. Errol*, 116 U. S. 517. Taxation of any kind is apt to affect interstate commerce, and so a more accurate limitation must be drawn, and that limitation is delivery of the goods to the journey. Manufacture belongs to the internal carrier or otherwise starting on the interstate economy of a state. Commerce succeeds manufacture and is not a part of it. *U. S. vs. Knight Co.*, 156 U. S., 1.

6. Other defects are claimed in regard to this tax. Thus it is claimed that the municipality cannot compel the tax payer to become the collector of the municipality

tax, as is required when the municipality is to retain from its *colonos* the amount due under this ordinance upon their sugars in the hands of the central. That this is vexatious and gives rise to misunderstandings between the factory and its patrons, is probable. It would seem, however, to be a question of fact which may need proof. The principle of paying taxation at the source was largely adopted during the World War and cannot be said to be wrong in principle. It is nevertheless true that a municipal corporation does not have all the powers of a sovereign and municipal ordinances may be declared void when unreasonable. This particular point may be left to the proof.

It is difficult to discuss the question on motion to dismiss without discussing at the same time the main equities of the bill, nor is it necessary to draw a distinct line between the two. Without discussing all the points, it would seem that the bill presents a number of grounds which give jurisdiction to this court, and for that reason the motion to dismiss must be denied.

It is so ordered.

Peter J. Hamilton, Judge.

San Juan, P. R.,
April 23, 1921.

CAMI, COMMISSIONER *v.* CENTRAL VICTORIA, LTD.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

No. 370. Submitted April 30, 1925.—Decided June 1, 1925.

1. Certiorari will not ordinarily be granted to review decisions of the Circuit Court of Appeals sustaining decisions of the Supreme Court of Porto Rico on local questions; but where the judgment of the Court of Appeals is a reversal, this Court cannot sustain a decision of the Porto Rico court without plausible grounds merely because the question is local. P. 470.
2. Porto Rican Act No. 9, of May 12, 1920, § 49, provides that municipal revenues shall embrace license taxes provided by Act No. 26, of March 28, 1914, "hereby declared to be in force", and "(f) any other . . . tax" that may be levied by two-thirds of the municipal assembly the object or matter of which is not also the object of any federal or insular tax. *Held* that a municipal tax of ten cents per cwt. on sugar manufactured in the municipality is unauthorized, because taxation of the business of sugar mills is

governed, and limits affixed, by the license tax provision in the Act of 1914. P. 471.
295 Fed. 809, affirmed.

CERTIORARI to a judgment of the Circuit Court of Appeals which reversed a judgment of the Supreme Court of Porto Rico refusing to prevent collection of a municipal tax.

Mr. E. B. Wilcox, with whom *Mr. Juan B. Soto* was on the brief, for petitioner.

Mr. Francis G. Caffey, with whom *Mr. George W. Study* was on the brief, for respondent.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a suit to prevent the collection of a tax imposed by a municipal ordinance of Carolina, Porto Rico, on the ground that the ordinance is void. The Supreme Court of the Island upheld the tax, 30 P. R. 413, but the judgment was reversed by the Circuit Court of Appeals, 295 Fed. 809, following its decision on the same day in *Successors of C. & J. Fantauzzi* v. *Municipal Assembly of Arroyo,* 295 Fed. 803. A writ of certiorari was granted by this Court. 265 U. S. 577. Had the Circuit Court of Appeals deferred to the local interpretation of Porto Rican statutes, we should not have granted a writ. We repeatedly have stated the reason for such deference, and we believe that the appellate jurisdiction was granted with other ends in view than that of setting the local courts right in their interpretation of their own laws. But since the case has been decided the other way we cannot avoid dealing with the merits and we should not be warranted in reversing the decision under review unless we thought either that it was wrong or at least that there was such plausible ground for the judgment reversed by it, that the local decision ought not to be disturbed.

The Supreme Court of Porto Rico expressed an intelligible doubt whether a bill for an injunction would lie in this class of cases, but no error was assigned on that ground, and in view of our opinion on the merits there is no sufficient reason for opening that question. When we come to the merits we are compelled to agree with the Circuit Court of Appeals as we understand the reasoning of that Court.

On February 17, 1921, the ordinance complained of was passed, and imposed a tax of ten cents on every hundredweight of sugar manufactured in the municipality. The statutes affecting the power to levy this tax are set out more fully in the principal opinion below. We give only those that immediately determine the result. The Porto Rican Act No. 9 of May 12, 1920, § 49, provides that the municipal revenues shall consist of (d) License taxes provided by Act No. 26, of March 28, 1914, "which is hereby declared to be in force." "(f) Any other impost, excise or tax that may be levied by two thirds of the members of the municipal assembly, provided that the object or matter of taxation is not also the object or matter of any federal or insular tax." The Act of 1914 included in its Group C the business of sugar and molasses mills among those that municipalities were empowered to tax, and proceeded: "The rates of taxation for Group C are made as follows: For each $1,000 or fraction thereof in excess of the first $500 of volume of business transacted, up to $1,000,000 inclusive $0.25 a year," and over that, $0.125. As the Act of 1914 is taken up into that of 1920, it is difficult for us to believe that in one paragraph the latter Act gave power to tax up to a specified maximum and in another a general power limited only by the other principles of taxation. Therefore when in § 49 (f) the later Act allows 'any other impost, excise or tax' we think it must be taken to mean any tax on other objects of taxation not any other tax on those for which a limit already definitely is prescribed.

The petitioner argues that the Circuit Court of Appeals was mistaken in assuming that the maximum allowed by the Act of 1914 had been reached by a previous tax. The assumption is made however only for the purpose of admitting that an additional tax of the kind warranted by the Act of 1914 might be imposed within the limit of the maximum, and as it is not argued that this tax can be sustained as that which is authorized by the Act of 1914 it does not matter whether the limit under that Act had been reached or not. This is a different tax levied under an interpretation of the clause in the Act of 1920 authorizing other taxes, which in our opinion cannot be sustained. We think it unnecessary to add more to what has been said below.

Decree affirmed.